

90-190

Supreme Court, U.S.

FILED

JUL 27 1990

JOSEPH F. SPANIO, JR.  
CLERK

No. \_\_\_\_\_

**In The  
Supreme Court Of The United States**

OCTOBER TERM, 1989

**IN THE MATTER OF MICHAEL J. DODSON,  
AN ATTORNEY-AT-LAW OF THE  
STATE OF CONNECTICUT,  
*Petitioner,***

v.

**SUPERIOR COURT OF THE  
STATE OF CONNECTICUT,  
*Respondent.***

**PETITION FOR WRIT OF CERTIORARI  
TO THE SUPREME COURT OF THE  
STATE OF CONNECTICUT**

**PETITION FOR WRIT OF CERTIORARI**

**MARGARET P. LEVY**  
60 Washington Street  
Hartford, CT 06106  
(203) 527-7735  
*Counsel for Petitioner*

Printed by  
Brescia's Printing Services, Inc.  
66 Connecticut Boulevard  
East Hartford, CT 06108  
528-4254

**QUESTIONS PRESENTED**

1. Whether the summary criminal contempt conviction of a criminal defense attorney for brief and spontaneous remarks made immediately subsequent to the imposition of a substantial sentence, violates his First Amendment rights of expression and the Sixth Amendment rights of his client to vigorous representation of counsel.
2. Whether petitioner was afforded a fair hearing for the charges of criminal contempt where he was adjudicated without benefit of notice of the charges, an evidentiary hearing or of representation of counsel.

**LIST OF PARTIES**

The caption of the case contains all parties.



## TABLE OF CONTENTS

QUESTIONS PRESENTED .....	i
LIST OF PARTIES .....	ii
TABLE OF AUTHORITIES .....	v
OPINIONS BELOW .....	viii
JURISDICTION .....	viii
CONSTITUTIONAL AND STATUTORY PROVISIONS INVOLVED IN CASE .....	viii
STATEMENT OF THE CASE .....	1
A. Procedural History .....	1
B. Statement of Facts .....	1
The Opinion of the Connecticut Supreme Court .....	4
REASONS FOR GRANTING THE PETITION .....	8
I. THIS MATTER RAISES THE ISSUE OF THE SUBSTANTIVE SCOPE OF JUDICIAL CONTEMPT POWER AND ITS RELATIONSHIP TO THE CONSTITUTIONAL RIGHTS ASSOCIATED WITH THE PROTECTION OF ADVOCACY .....	8
A. The definition of contempt as articulated by the Connecticut Supreme Court is unconstitu-tionally overbroad .....	11
B. The petitioner's	

momentary reaction in response  
to the trial court's sentence  
failed, as a matter of law, to  
constitute contempt.

..... 19

II. THE OPINION BELOW, UPHOLDING  
THE SUMMARY CRIMINAL CONTEMPT  
CONVICTION OF THE PETITIONER  
FOR CONDUCT INVOLVING A MINOR  
LAPSE OF DECORUM CONTRADICTS  
THIS COURT'S CASES AND IMPOSES  
AN UNCONSTITUTIONAL STANDARD.

..... 24

A. The instant matter  
did not rise to a level where  
immediate punishment was  
necessary.

..... 26

B. A hearing held  
prior to adjudication was  
Constitutionally mandated to  
resolve issues of fact and law.

..... 28

CONCLUSION ..... 31

APPENDIX ..... 2a

## TABLE OF AUTHORITIES

<u>Bridges v. California,</u> 314 U.S. 252 (1941) .....	13
<u>Cooke v. United States,</u> 267 U.S. 517 (1925) .....	25
<u>Craig v. Harney,</u> 331 U.S. 367 (1947) .....	20
<u>Eaton v. City of Tulsa,</u> 415 U.S. 697 (1974) .....	13
<u>Ex Parte Krupps,</u> 712 S.E.2d 144 (Tex.Ct.App. 1986), <u>cert. denied</u> , 479 U.S. 1102 (1987) .....	9
<u>Gordon v. United States,</u> 592 F.2d 1215 (1st Cir. 1979) .....	17
<u>Hawk v. Cardoza,</u> 575 F.2d 732 (9th Cir. 1978) .....	8
<u>In Re James B. Daniels</u> 118 N.J. 51 (1990) <u>cert. pending</u> .....	9
<u>In Re Little,</u> 404 U.S. 553 (1972) .....	8, 15, 16, 19, 20, 21

<u>In Re McConnell,</u> 370 U.S. 230 (1964) ..... 8, 14, 15, 16, 19, 20, 21, 23	
<u>Matter of Contempt of Greenberg,</u> 849 F.2d 1251 (9th Cir. 1988) ..... 17	
<u>Offut v. United States,</u> 348 U.S. 11 (1954) ..... 20	
<u>Sacher v. United States,</u> 343 U.S.1 (1952) ..... 13	
<u>Spruell v. Jarvix,</u> 654 F.2d 1090 (5th Cir. 1981) ..... 26	
<u>State v. Harper,</u> 375 S.E.2d 272 (1989) ..... 9	
<u>United States v. Lumumba,</u> 794 F.2d 806 (2d Cir. 1986) ..... 17	
<u>United States ex rel. Robson</u> <u>v. Oliver,</u> 470 F.2d 10 (7th Cir. 1972) ..... 17	
<u>United States v. Seale,</u> 461 F.2d 345 (7th Cir. 1972) ..... 15, 17	

United States v. Wilson.

421 U.S. 309 (1975) ..... 25

Weiss v. Burr,

484 F.2d 973  
(9th Cir. 1973) ..... 8

Wolfe v. Coleman,

681 F.2d 1302  
(11th Cir. 1982) ..... 26

Statutes:

Colo. Rev. Stat. 10-1-104  
(1978) ..... 9  
Fla. Stat. Ann. 900.04 (1984) ..... 9  
Ill. Rev. Stat. Ch. 38 ..... 9  
R.I. Gen. Laws Ann. Sections  
8-6-1 ..... 9  
Tex. Govt. Code Section 21.002 ..... 9  
Vt. Stat. Ann. 1 Tit. 12 ..... 9

Other Authorities:

Dobbs, Contempt of Court:  
A Survey, 56 Cornell L. Rev.  
183 (1971) ..... 22

Kuhns, The Summary Criminal  
Contempt Power: A Critique  
and a New Perspective,  
88 Yale L.J. 39 (1978) ..... 29

Raveson, Advocacy and Contempt:  
Constitutional Limitations on  
the Judicial Contempt Power,  
65 Wash. L. Rev. \_\_\_\_  
(July, 1990) ..... 17

**OPINIONS BELOW**

The decision of the Supreme Court of Connecticut is reported at 214 Conn. 344, \_\_\_\_ A.2d \_\_\_\_ (1990), and is reprinted in the Appendix (2a-82a). The decision of the Connecticut Superior Court, Appellate Decision, is unreported.

**JURISDICTION**

The judgement and opinion of the Supreme Court of Connecticut, affirming the judgment of the trial court summarily convicting defendant of contempt, was entered on April 25, 1990. This Court has jurisdiction to review the judgement of the Supreme Court of Connecticut pursuant to 28 U.S.C. Section 1257(3).

**CONSTITUTIONAL AND STATUTORY  
PROVISIONS INVOLVED IN THIS CASE**

**FIRST AMENDMENT  
UNITED STATES CONSTITUTION**

Congress shall make no law respecting an establishment of religion, or prohibiting the free exercise thereof; or abridging the freedom of speech, or of the press; or the right of the people

peaceably to assemble, and to petition the Government for a redress of grievances.

SIXTH AMENDMENT  
UNITED STATES CONSTITUTION

Jury trial for crimes and  
procedural rights

In all criminal prosecutions, the accused shall enjoy the right to a speedy and public trial, by an impartial jury of the State and district wherein the crime shall have been committed, which district shall have been previously ascertained by law, and to be informed by the nature and cause of the accusation; to be confronted with the witnesses against him; to have compulsory process for obtaining witnesses in his favor, and to have the Assistance of Counsel for his defense.

FOURTEENTH AMENDMENT SEC. ONE  
UNITED STATES CONSTITUTION

Sec. 1. All persons born or naturalized in the United States, and subject to the jurisdiction thereof, are citizens of the United States and of the State wherein they reside. No State shall make or enforce any laws which shall abridge the privileges or immunities of citizens of the United States; nor shall any State deprive any person of life, liberty or property, without due process of law; nor deny to any person within its jurisdiction the equal protection of the laws.



**CONNECTICUT PRACTICE BOOK**  
**SECTION 988**

**CRIMINAL CONTEMPT--SUMMARY CONTEMPT**  
**NATURE OF PROCEEDINGS**

A criminal contempt may be punished summarily if the conduct constituting the contempt was committed in the actual presence of the court or the judicial authority and such punishment is necessary to maintain order in the courtroom. A judgment of guilty of contempt shall include a recital of those facts on which the adjudication of guilt is based. Prior to the adjudication of guilt the judicial authority shall inform the defendant of the accusation against him and inquire as to whether he has any cause to show why he should not be adjudged guilty of contempt by presenting evidence of excusing or mitigating circumstances. (P.B. 1962, Sec. 2399).

**18 U.S.C. Section 401 (1970)**

A court of the United States shall have power to punish by fine or imprisonment, at its discretion, such contempt of its authority, and none other, as --

(1) Misbehavior of any person in its presence or so near thereto as to obstruct the administration of justice;

(2) Misbehavior of any of its officers in their official transaction;

(3) Disobedience or resistance to its lawful writ, process, order, rule, decree, or command.



## **STATEMENT OF THE CASE**

### **A. Procedural History**

On November 10, 1988, Petitioner, Michael J. Dodson, Esquire was convicted of Contempt by a judge of the Superior Court of Connecticut. On November 15, 1988, a fine of \$100 was imposed. On November 28, 1988, the petitioner filed a Motion for Articulation of the sanction's nature. On December 9, 1988, the court issued its articulation.

On March 27, 1989 the Supreme Court of the State of Connecticut affirmed the conviction. See Opinion at 2a to 82a.

### **B. STATEMENT OF FACTS**

On November 10, 1988, the petitioner, an attorney licensed to practice law in the State of Connecticut was representing a client in State v. Walker, at a sentencing hearing held before the honorable James Higgins, presiding over

the Superior Court. The petitioner's client had recently been convicted by jury, of murder. During the hearing and immediately subsequent to the imposition of sentence the following dialogue transpired between the Court and the petitioner:

"Mr. Dodson: I think it is most unusual. I think that is totally outrageous. The court can do-

"The Court: You may notify the defendant-

"Mr. Dodson: Thirty years more on the same set of facts, I think ...

"The Court: Notify the defendant of his rights to appeal.

"Mr. Dodson: There is no basis-

"The Court: You're out of order.

"Mr. Dodson: I know I am, but there is no basis for that sentence.

"The Court: He is held in contempt of this Court.

"Mr. Dodson: I apologize for my remarks.

"The Court: Notify the defendant of his rights to appeal on the record."

1T1<sup>1</sup>

At the conclusion of the proceedings, the petitioner was directed to remain within the confines of the courtroom and afforded the opportunity to obtain counsel, albeit within the limits of his confinement.

On November 15, 1988, the petitioner, having been released on his own recognizance and his counsel appeared before the court, Judge Higgins presiding. At this time both individuals were allowed to address the court. Without articulating the factual finding of contempt or setting forth a factual basis for its decision, the court imposed a fine of \$100. (2T7).

On November 28, 1988, the petitioner

---

<sup>1</sup>"1T" refers to the transcript dated November 10, 1988; "2T" refers to the transcript, dated November 15, 1988.

filed motions for an extension to file a Writ of Error to the Connecticut Supreme Court or in the alternative, for an Appeal to the Appellate Court. The reasons set forth in the requests were based upon the absence of a specific rendition of summary criminal contempt. A request for such clarification was made by counsel at the November 15th hearing. The request was not acted upon by the court at that time. In addition to the above-mentioned pleading, the petitioner submitted to the court a written Motion for Articulation. The motion was granted and an articulation of summary criminal contempt pursuant to Connecticut Practice Book Section 988 was issued on December 9, 1988.

**THE OPINION OF THE**

**CONNECTICUT SUPREME COURT**

The Connecticut Supreme Court, sitting

en banc, affirmed the petitioner's conviction with one justice dissenting. The court initially recognized that an attorney should be zealous in his representation of a client and that this right must be fully enjoyed with due allowance for the heat of controversy. The majority also recognized that the role of a judge requires caution and circumspection in the use of his or her power to prevent disruptions and distractions. App. 161 - 19a.

Directing its attention to the petitioner's "outburst," during the sentencing, the court noted that at the moment, the judge was attempting to instruct the clerk to inform the Defendant of his rights to appeal the verdict and was twice interrupted by the petitioner who failed to take heed of the court's "warning" that he was "out of

order." The opinion below also noted that in the course of the colloquy, the petitioner's voice was "elevated" and that he "threw" his pencil on the counsel table. App. 29a - 33a.

The petitioner's conduct was found to be consistent with behavior which immediately imperiled the dignity and authority of the court. The interruption of the clerk's task to notify the Defendant of his rights was held to constitute an obstruction of a valid court order, directly hindering the orderly processing of judicial business. App. at 33a - 36a.

Finally, the court found that the immediate adjudication of contempt without affording the petitioner an opportunity of notice or hearing did not violate his due process protection. The court reasoned that the judge's

admonition that the petitioner was "out of order" provided a clear and definite caution. Further, the fact that the petitioner was allowed a continuance to obtain counsel and to address the court prior to sentencing satisfied the due process requirements. App. at 44a - 47a.

In his dissent, Justice Shea noted that the elemental due process protection are contained within the mandatory requirements of Section 988 of the Connecticut Practice Book. He further observed that the trial court's failure to inform the petitioner of the accusation against him and inquire as to whether he had evidence to excuse or mitigate prior to the actual adjudication, as is required by the Practice Book, was a violation of substantial proportions.



## REASONS FOR GRANTING PETITION

### I. THIS MATTER RAISES THE ISSUE OF THE SUBSTANTIVE SCOPE OF JUDICIAL CONTEMPT POWER AND ITS RELATIONSHIP TO THE CONSTITUTIONAL RIGHTS ASSOCIATED WITH THE PROTECTION OF ADVOCACY.

The most recent decision of this court concerning the constitutional limitations of summary contempt power have restricted its exercise to those situations involving imminent threats of obstruction or actual obstruction of judicial proceedings. In Re Little, 404 U.S. 553 (1972); In Re McConnell, 370 U.S. 230, 233-34 (1964).

Despite these holdings, there exists a wide disparity of definitions employed by the highest state Appellate courts and Federal Circuits.<sup>2</sup> In addition, numerous

---

<sup>2</sup>See e.g. Weiss v. Burr, 484 F.2d 973, 982 (9th Cir. 1973) (state prosecutor's conduct measured by '[significant, imminent threats to fair administration of justice]'); Hawk v. Cardoza, 575 F.2d 732, 735 (9th Cir. 1978) (Actual obstructing standard applied to conduct in state proceeding);



state statutes employ definitions of contempt which are broader than actual obstruction or imminent threat or have not provided any definition of the offense, effectively leaving this task to the court discretion.<sup>3</sup>

The lack of uniformity of the scope of contempt power has arguably created a standard of total judicial discretion,

---

State v. Harper, 297 S.C. 275, 375 S.E.2d 272, 274 (1989) (actual obstruction); Ex parte Krupps, 712 S.E.2d 144, 150 (Tex.Ct.App. 1986), cert. denied, 479 U.S. 1102 (1987) ("criminal contempt is not restricted to conduct that obstructs or tends to obstruct the proper administration of justice."); In Re James B. Daniels, 118 N.J. 51, 570 A.2d 416 (1990), cert. pending (contempt is conduct which has "the capacity to obstruct the administration of justice.").

<sup>3</sup>See e.g., Colo. Rev. Stat. 10-1-104 (1978 Repl. Vol. 8); Fla. Stat. Ann. 900.04 (West 1984); Ill. Rev. Stat. Ch. 38, Sections 1 - 3 (1989); R.I. Gen. Laws Ann. Sections 8-6-1 (1985); Tex. Govt. Code Ann. Section 21.002 (Vernon 1988); Vt. Stat. Ann. Tit. 12, Sections 121-23.

unrestricted by objective criteria and grounded in the subjective sensibilities of the trial courts.

Similarly, even when an actual obstruction standard is employed, as it was in the instant matter, the definition of obstructive behavior remains vague and ambiguous. This result is problematic as it renders the scope of contempt equally susceptible to the subjective will of the courts.

The differences in both definition and application of the contempt power militates in favor of guidance by this court. In the absence of such guidance, the potential for arbitrary and subjective use of contempt threatens to create a chilling effect upon zealous advocacy undertaken in good faith and protected by the First and Sixth Amendments.

**A. THE DEFINITION OF CONTEMPT AS  
ARTICULATED BY THE CONNECTICUT SUPREME  
COURT IS UNCONSTITUTIONALLY OVERBROAD**

In its opinion, the Connecticut Supreme Court dealt with an incident described as being an "outburst," consisting of approximately four sentences uttered by the petitioner. App. at 8a - 9a; 31a - 35a. Commencing with the observation that "[f]rom necessity the court must be its own judge of contempt committed within its presence," the court proceeded to characterize the petitioner's outburst as a significant hindrance to the authority of the court's authority. App. at 38a - 43a. [emphasis added].

The decision specifically held that the petitioner's conduct directly interfered with the court's order to the clerk to notify the Defendant of his rights to appeal. This, according to the decision, amounted to obstruction of the execution

of a valid court order as it "directly hindered and interfered with the Superior Court qua Superior Court in its orderly processing of the business before it."

App. at 43a - 47a

Throughout the aforementioned discussion, no reference is made to any decision which supports the view that a momentary lapse of decorum, resulting in an equally brief interruption of court may be equivocated with the extraordinary remedy of summary criminal contempt.

The petitioner submits that this decision has failed to comport with the stringent restrictions imposed by this court to protect the zealous representation of counsel. Rather, in premising its holding upon the necessity of allowing the trial court broad powers of judgment as to what constitutes contempt, and in failing to delineate

merely excessive advocacy from actual obstruction, the Connecticut Supreme Court has neglected to enforce the mandates set forth by this Court.

In Bridges v. California, 314 U.S. 252 (1941), this court reversed on first amendment grounds, contempt convictions for extrajudicial statements critical of judges conduct. In Eaton v. City of Tulsa, 415 U.S. 697, 698 (1974) (per curiam), this court held that the first amendment prevents contempt convictions where verbal behavior does not constitute an "imminent threat to the administration of justice."

In Sacher v. United States, 343 U.S. 1, 8-9 (1952), this court held that summary punishment is rightfully to be regarded with disfavor. In cases involving summary criminal contempt, the use of the remedy must be tempered by due allowance

for the heat of controversy. Further, this court has stated that such an allowance "will be protected by the appellate Courts when infringed by trial courts."

This court has recognized that the allegedly contumacious expression or conduct of an attorney must be evaluated within the context of his role as advocate. In In Re McConnell, supra, the attorney failed to refrain from asserting his right to ask specific questions, even though he was ordered to do so by the judge. Id. at 232. The contemnor further stated, "we have a right to ask these questions....and we propose to do so unless some bailiff stops us." Id. at 235.

In reversing McConnell's conviction, this court found that nothing in the petitioner's conduct was "sufficiently

disruptive of the trial court's business to be a disruption of justice." Id at 235-236. [emphasis added].<sup>4</sup> Implicit in this court's decision, is the delineation between any disruption and conduct which is "sufficiently disruptive" as to be an obstruction of justice.<sup>5</sup>

This court has likewise considered the conviction of a pro se criminal defendant who was held in contempt for arguing in

---

<sup>4</sup>The petitioner notes that while In Re McConnell was concerned with federal statutory contempt, this court extended its rationale to contemptuous conduct occurring in a state proceeding. In Re Little, supra.

<sup>5</sup>In United States v. Seale, 461 F.2d 345, 369 (7th Cir. 1972), the court likewise delineated mere interruption of judicial proceedings from material obstruction deserving of contempt. "Clearly....[the] proposed 'any interruption' standard is too encompassing, for trials are by nature adversary and contentious, and few proceed without some form of interruption." Id.



his summary that he was a political prisoner and was prejudiced by the trial judge's conduct. The lower court had characterized the contemnor's remarks as "very disrespectful and tended to subvert and prevent justice." In Re Little, 404 U.S. 554, 555 (1972) [emphasis added].

In reversing Little's conviction, this court rejected the lower Court's conclusion that the statements "directly tended to interrupt [trial] proceedings." Rather, this court held that the pro se litigant was "clearly entitled to as much latitude in the conduct of his defense as we have held is enjoyed by counsel vigorously espousing a client's cause." Id. [citation omitted].

The Little decision closely tracked McConnell in delineating the standard of "any interference" from that of an imminent threat to the administration of



justice.<sup>6</sup> Implicit in both decisions is the awareness of the court that the vigorous espousing of advocacy cannot always be reconciled with "automaton-like reflexive obedience to court orders." United States v. Seale, *supra* at 373.

The instant matter is constitutionally problematic because no attempt is made by the Connecticut court to explain how "the authority of the [trial] court in this case was significantly hindered by the

---

<sup>6</sup>See Raveson, Advocacy and Contempt: Constitutional Limitations on the Judicial Contempt Power, 65 Wash.L.Rev. (July, 1990), presenting the proposition that the actual obstruction and imminent threat standards reflect identical constitutional concerns and should produce comparable results. This equivalence has also been accepted in cases arising from the federal contempt statute. See *e.g.*, See, e.g., United States ex rel. Robson v. Oliver, 470 F.2d 10, 14 (7th Cir. 1972); United States v. Lumumba, 794 F.2d 806, 808 (2d Cir. 1986); Matter of Contempt of Greenberg, 849 F.2d 1251, 1255 (9th Cir. 1988); Gordon v. United States, 592 F.2d 1215, 1217 (1st Cir. 1979).

petitioner's conduct." App. at 43a - 47a. [emphasis added]. The opinion lacks a concise definite of what constitutes a "significant" interference of actual obstruction other than that the petitioner's brief "outburst" delayed the reading of the defendant's appellate rights.

The petitioner submits that in the absence of such a definition, the instant decision creates a dangerous precedent which equivocates an "actual obstruction of justice" with "any interruption" of court proceedings. Clearly such a result has the potential of engendering a chilling effect upon the bar's willingness to engage in advocacy which might, even inadvertently, create the most minimal interference with judicial process.

The ambiguous nature of the opinion

below allows for the implementation of an overly broad standard which fails to comport with the decisions of this court. As the application of Connecticut and other jurisdictions definitions of contempt threaten to undermine the role of effective and zealous advocacy, this court should reverse the instant ruling and resolve the disparity of opinion concerning the scope of the contempt power.

**B. THE PETITIONER'S MOMENTARY REACTION IN RESPONSE TO THE TRIAL COURT'S SENTENCE FAILED, AS A MATTER OF LAW, TO CONSTITUTE CONTEMPT.**

This Court's decisions have clearly stated that the power of contempt cannot be so broad in scope as to undermine the ability of counsel to zealously represent his client. See In Re McConnell, supra; In Re Little, supra. Similarly this Court has held that "[j]udges are

supposed to be men of fortitude, able to thrive in a hardy climate." Craig v. Harney, 331 U.S. 367, 376 (1947). Cf. Offut v. United States, 348 U.S. 11, 14 (1954) (noting that the judge's power of contempt is "totally unrelated to his personal sensibilities..."); In Re Little, supra (noting that the judges must be on guard against confusing offenses to their sensitivities with the obstruction of justice).

Both the McConnell and Little decisions involved conduct which clearly involved zealous behavior amounting to disrespect, discourtesy and some interference with the court's business, yet in neither case was contempt ruled to be appropriate. In McConnell, the contemnor actually challenged the dignity and integrity of the court by threatening disobedience of its order at least two separate times and

criticized its wisdom on three occasions.  
Id. at 235.

The undeniable result of the McConnell colloquy was the inter-ruption of the court's business, culminating the need for a recess as requested by co-counsel. The delay, although undeniable present, was not considered by this court as "sufficiently disruption of the trial court's business to be an obstruction of justice." Id. at 235-236.

The constitutionally mandated tolerance of the disrespectful and momentarily-delaying behavior of Attorney McConnell clearly demonstrates that this Court has never recognized the scope of contempt to encompass the natural consequences of vigorous advocacy such as occasional lapses of decorum, minor excesses in argument, cf In Re Little, supra or the insubstantial interruption or delay which

may result.

The fact that such lapses should not be given judicial imprimatur does not immediately make them susceptible to the extraordinary interdiction of contempt. See Dobbs, Contempt of Court. A Survey, 56 Cornell L.Rev. 183, 208 (1971) ("Where nothing more than disrespect or discourtesy is involved...the dangers of abuse of contempt power may outweigh the benefits of using that power."). The condoning of the use of contempt in situations involving momentary discourtesy or minor interruption cannot but cause all advocates to consciously avoid vigorous advocacy in an effort of self-protection. Such a retreat would threaten the very notions of sixth amendment protection.

In the opinion below, the court was concerned with an incident, the duration

of which was briefer than that of McConnell. Unlike McConnell the petitioner's statements included no threats to disobey the trial court's final order. Indeed, the spontaneity and brevity of the petitioner's "outburst," as described in the opinion below belies the lower court's characterization of its resulting in a substantial interference with the trial court's business. Significantly, absent from the opinion is citation to any federal or state case upholding a contempt conviction for conduct similarly spontaneous, brief and unobstructive.

The court below framed its opinion with the admonition that "[o]n the matter of 'courtroom decorum,' an attorney '[a]s an officer of the court...should support the authority of the court and the dignity of the trial court by strict adherence to



the rules of decorum and by manifesting an attitude of professional respect toward the judge, opposing counsel, witnesses, jury and others in the courtroom." App. at 23a - 25a [citation omitted]. While acknowledgment and encouragement of "strict adherence" to decorum must be commended to all attorneys, the petitioner's brief and spontaneous reaction to the imposition of a substantial sentence cannot be held to justify the imposition of a criminal penalty if the freedom of the bar to engage in vigorous advocacy is to remain intact.

**II. THE OPINION BELOW, UPHOLDING THE SUMMARY CRIMINAL CONTEMPT CONVICTION OF THE PETITIONER FOR CONDUCT INVOLVING A MINOR LAPSE OF DECORUM CONTRADICTS THIS COURT'S CASES AND IMPOSES AN UNCONSTITUTIONAL STANDARD.**

The opinion below found substantial compliance with the Court Rules of



Practice which provide for the opportunity of notice and hearing prior to the adjudication of summary criminal contempt. App. at 363-364.

This Court has employed two justifications for the imposition of summary criminal contempt convictions. In United States v. Wilson, 421 U.S. 309, 316 (1975), this Court approved of immediate punishment where it was necessary to halt serious disruption of the court and to vindicate its authority. In cases such as Cooke v. United States, 267 U.S. 517, 534-536 (1925), the conduct occurred before the trial court and further fact-finding was found to be unnecessary.

The Petitioner submits that both prongs of these justifications must be present to allow the immediate imposition of the contempt conviction. However, this court

has not delineated the limits of the power to proceed in a summary manner and presents the instant case as providing the impetus for a more detailed guide from this Court, clarifying when normal due process protections may be dispensed with.

**A. THE INSTANT MATTER DID NOT RISE TO A LEVEL WHERE IMMEDIATE PUNISHMENT WAS NECESSARY.**

The extraordinary remedy of summary criminal contempt has been held to be appropriate where the conduct of the contemnor presents an ongoing threat to the proceedings of the court. See e.g., Wolfe v. Coleman, 681 F.2d 1302, 1306 (11th Cir. 1982). The measure has been rejected where conduct "cannot be said to have amounted to an obstruction of the orderly administration of the judicial process." Spruell v. Jarvis, 654 F.2d 1090 (5th Cir. 1981).

In the instant matter, the Petitioner's remarks cannot be characterized as so obstructive as to allow the normal protections of procedural due process to be jettisoned. The Petitioner submits that where the conduct does not immediately threaten the administration of justice, there is no compelling need for an immediate remedy, and the basic procedural protections must be enforced. See App. at 98a - 102a.

**B. A HEARING HELD PRIOR TO ADJUDICATION WAS CONSTITUTIONALLY MANDATED TO RESOLVE ISSUES OF FACT AND LAW.**

The instant matter occurred within a brief time frame, in the midst of an extremely critical stage of the proceedings. Particularly, when the aid of a transcript is employed, courts must be cognizant of the potential for oversimplification of the nature of the colloquies between judges and counsel.

Likewise and understandably, trial courts must be assumed to possess an immediate desire for resolution and indication of authority. Both factors militate in favor of an intensive review of constitutionally-sanctioned methodologies.

In the instant case, the petitioner's "outbursts" were spontaneous and indeed by their very brevity, pose serious issues regarding intent. The combination of the risk of judicial misperception of the events as well as the legal problem of the intentional nature of the Petitioner's conduct presents fundamental questions relating to the propriety of

summary action in this matter.<sup>7</sup>

The risk of error in a proceeding involving the imposition of criminal penalties militates in favor of the a factual hearing prior to the adjudication of contempt, and not merely an opportunity for allocation before sentence is passed as occurred in the instant matter.<sup>8</sup>

---

<sup>7</sup>See Kuhns, The Summary Contempt Power: A Critique and a New Perspective, 88 Yale L.J. 39, 49-50 (1978): challenging a trial judge's ability to accurately find facts or determine mens rea of a contemnor in the absence of a hearing.

<sup>8</sup>As noted in the dissent below, "Anyone who is familiar with human nature must recognize the herculean task, imposed upon a litigant seeking reversal from the same trier of fact that has been publicly announced." App. at 100a.

**CONCLUSION**

The treatment of contempt has long been the subject of disparate and uneven treatment within our federal and state courts. Numerous lower decisions have yielded no uniformity and have created serious infringements of fundamental constitutional proportion. The more subtle, but no less injurious result is the potential engendering of a chilling effect upon the advocacy of all counsel who represent clients, be they governmental, corporate or personal, at trial. There is an immediate need for this court to further define both the substantive and procedural limits of contempt. For all the foregoing reasons, a Writ of Certiori should be granted for review of the issues raised herein.

Respectfully submitted,

Margaret P. Levy  
60 Washington St.  
Hartford CT 06106  
(203) 527-7735  
Counsel of Record

OF COUNSEL:  
Brian M. O'Connell  
SLITT & GERACE  
60 Washington St.  
Hartford CT 06106  
(203) 525-4461



90-190

Supreme Court, U.S.  
FILED

JUL 27 1990

JOSEPH F. SPANIOL, JR.  
CLERK

No. \_\_\_\_\_

**In The  
Supreme Court Of The United States**

OCTOBER TERM, 1989

**IN THE MATTER OF MICHAEL J. DODSON,  
AN ATTORNEY-AT-LAW OF THE  
STATE OF CONNECTICUT,  
*Petitioner,***

v.

**SUPERIOR COURT OF THE  
STATE OF CONNECTICUT,  
*Respondent.***

**PETITION FOR WRIT OF CERTIORARI  
TO THE SUPREME COURT OF THE  
STATE OF CONNECTICUT**

**APPENDIX TO  
PETITION FOR WRIT OF CERTIORARI**

**MARGARET P. LEVY**  
60 Washington Street  
Hartford, CT 06106  
(203) 527-7735  
*Counsel for Petitioner*

Printed by  
Brescia's Printing Services, Inc.  
66 Connecticut Boulevard  
East Hartford, CT 06108  
528-4254

APPENDIX  
TABLE OF CONTENTS

OPINION OF THE CONNECTICUT  
SUPREME COURT DATED MARCH  
27, 1990, AFFIRMING SUPERIOR  
COURT'S JUDGMENT OF CONTEMPT..... 2a

ORDER OF THE CONNECTICUT  
SUPREME COURT DATED APRIL  
25, 1990, DENYING  
RESPONDENT'S MOTION FOR  
RECONSIDERATION.....78a

ARTICULATION OF HONORABLE  
HIGGINS, J. DATED DECEMBER  
9, 1988..... 79a

IN RE MICHAEL J. DODSON

(13622)

Peters, C.J., Healey, Shea, Callahan,  
Glass, Covello and Hull, Js.

Argued December 5, 1989-Decision  
released March 27, 1990

Writ of error from the judgment of the  
Superior Court in the judicial district  
of Hartford-New Britain at Hartford,  
Higgins, J., finding the petitioner in  
contempt of court and imposing a fine. No  
error.

Brian M. O'Connell, for the appellant  
(petitioner).

Timothy J. Sugrue, deputy assistant  
state's attorney, for the appellee  
(state).

ARTHUR H. HEALY, J. The petitioner  
Michael J. Dodson has brought a writ of  
error to this court seeking a reversal of  
the Superior Court judgment finding him

in contempt of court and imposing a fine of \$100. The writ raises the issue of whether the petitioner's adjudication and punishment of summary criminal contempt comported with due process under the fourteenth amendment to the United States constitution,<sup>1</sup> article first, Section 8 of the Connecticut constitution<sup>2</sup> and Sections 985 and 988 of the Practice Book.<sup>3</sup>

---

<sup>1</sup>The fourteenth amendment to the United States constitution provides in part: "nor shall any State deprive any person of life, liberty, or property, without due process of law...."

<sup>2</sup>The constitution of Connecticut, article first, Section 8 provides in part: "No person shall...be deprived of life, liberty or property without due process of law....."

<sup>3</sup>Practice Book Section 985 provides: "A criminal contempt is conduct that is directed against the dignity of the court. The sanction for a criminal contempt is punitive in order to vindicate the authority of the court."

Practice Book Section 988, entitled "Nature of Proceedings" (summary

"The present case, which involves a review of a summary criminal contempt proceeding, comes before us on a writ of error which is the sole method of review of such proceedings. Whiteside v State, 148 Conn. 77, 78-79, 167 A.2d 450 (1961); Goodhart v State, 84 Conn. 60, 63, 78 A. 853 (1911). The scope of our review reaches only those matters appearing as of record. State v. Assuntino, 180 Conn. 345, 347, 429 A.2d 900 (1980); Reilly v.

---

contempt), provides: "A criminal contempt may be punished summarily if the conduct constituting the contempt was committed in the actual presence of the court or the judicial authority and such punishment is necessary to maintain order in the courtroom. A judgment of guilty of contempt shall include a recital of those facts on which the adjudication of guilt is based. Prior to the adjudication of guilt the judicial authority shall inform the defendant of the accusation against him and inquire as to whether he has any cause to show why he should not be adjudged guilty of contempt by presenting evidence of excusing or mitigating circumstances."

State, 119 Conn. 217, 223, 175 A. 582 (1934). In a review of summary criminal contempt, the inquiry is limited to a determination of the jurisdiction of the court below. Tyler v. Hammersley, 44 Conn. 393, 413 (1877). Subsumed in this inquiry are three questions, namely, (1) whether the designated conduct is legally susceptible of constituting a contempt; Goodhart v. State, supra; (2) whether the punishment imposed was authorized by law; State v. Jackson, 147 Conn. 167, 169, 158 A.2d 166 (1960); and (3) whether the judicial authority was qualified to conduct the hearing. Mayberry v. Pennsylvania, 400 U.S. 455, 465-66, 91 S.Ct. 499, 27 L.Ed.2d 532 (1971)." Moore v. State, 186 Conn. 256, 257, 440 A.2d 969 (1982).

The record discloses, inter alia, the following. On November 10, 1988, the



petitioner, an attorney admitted to the practice of law in Connecticut, was representing Michael Walker<sup>4</sup> at a sentencing hearing before the Honorable James Higgins in the Superior Court. During the course of that hearing, and immediately following the imposition of

---

<sup>4</sup>On September 22, 1988, after a jury trial, Michael Walker had been found guilty of one count of murder in violation of General Statutes Sections 53a-8 and 53a-54a(a), one count of conspiracy to commit murder in violation of General Statutes Sections 53a-48(a) and 53a-54a(a) and one count of assault in the first degree in violation of General Statutes Sections 53a-59(a)(1) and 53a-8. The first count involved the death of Thomas Dixon; the second count involved Tracey Fisher as a coconspirator; and the third count involved the injury of Barrington Solomon. The trial court, Higgins, J., imposed a sentence of sixty years on the first count, and sentences of twenty years on each of the second and third counts to be served concurrently but to be served consecutively to the sentence imposed on the first count. Thus, the total effective sentence was eighty years. The petitioner also represented Walker during his trial.

sentence, the following took place between the court and the petitioner:

"Mr. Dodson: I think it is most unusual. I think that is totally outrageous. The court can do-

"The Court: You may notify the defendant-

"Mr. Dodson: Thirty years more on the same set of facts, I think ...

"The Court: Notify the defendant of his rights to appeal.

"Mr. Dodson: There is no basis-

"The Court: You're out of order.

"Mr. Dodson: I know I am, but there is no basis for that sentence.

"The Court: He is held in contempt of this Court.

"Mr. Dodson: I apologize for my remarks.

"The Court: Notify the defendant of his rights to appeal on the record."

The court thereupon took a recess. The petitioner was asked to remain in the courtroom and was allowed access to a telephone to obtain counsel. Shortly thereafter, Attorney Gerald Klein arrived at Judge Higgins' chambers to indicate that he represented the petitioner. At that time, Klein was shown a copy of the transcript of the prior proceedings that had already been prepared. The Court was prepared to continue and finish the summary contempt proceedings at that time. A request for a continuance, made by Klein, was granted to Tuesday, November 15, 1988. (November 11, 1988, a Friday, was a holiday and there was no court on November 14, 1988, the following Monday, due to the Connecticut State Bar Association meeting.)

On Tuesday, November 15, 1988, the court held a hearing at which the

petitioner appeared with Klein. After the court inquired whether the petitioner wished to be heard, both Klein and the petitioner addressed the court. At the conclusion of the hearing, the court imposed a fine of \$100. This writ of error by the petitioner followed.

The petitioner maintains that his conduct in open court on November 10, 1988, did not constitute a contempt within the meaning of Practice Book Section 985. This rule states that "criminal contempt is conduct that is directed against the dignity and authority of the Court." See State v. Jackson, Supra. In denying the applicability of Section 985, the petitioner points to Practice Book Section 986<sup>5</sup> which provides who may be

---

<sup>5</sup>Practice Book Section 986, entitled "Who May Be Punished [for Criminal Contempt]", provides: "The judicial authority may punish by fine or

punished for criminal contempt. He contends that his conduct does not place him within any portion of Section 986, which, he says, must involve not only an act that "disturbs" the dignity and authority of the court, but must also be directed against it. His conduct, he asserts, does not reflect an intent to disobey the rules or orders of the court but rather "the record clearly depicts [him] in the role of an advocate, engaged in the representation of a client." His

---

imprisonment or both:

"(1) Any person who in the court's presence behaves in a contemptuous or disorderly manner;

"(2) Any person who violates the dignity and authority of any court, or any judicial authority, in its presence or so near thereto as to obstruct the administration of justice;

"(3) Any officer of the court who misbehaves in the conduct of his official court duties; or

"(4) Any person disobeying in the course of a civil or criminal proceeding any order of a judicial authority."

"statement" did not, he maintains, "interrupt the Court in its pronouncement of sentence, but rather occurred after the court had recited all penalties and imposed costs." Moreover, the petitioner claims that "his forbearance clearly belies any claim that his intention was to disrupt the proceedings at hand." In addition, he claims that it cannot be "alleged" that he violated any procedural rule restricting an attorney's opportunity to address the court subsequent to the imposition of sentence. In a word, his conduct, from his perspective, was confined to his legal responsibilities of providing effective representation. We hold nonetheless that the petitioner's conduct constituted a contempt under Section 985.

I

Since we speak of criminal contempt as

conduct against the dignity and authority of the court, it is useful briefly to articulate the concepts of dignity and authority encompassed in this context. The expression "dignity of the court" proclaims a demand, to all dealing with the court, for proper respect and obedience in its function of interpreting, administering and enforcing the law within its authority to do so. See generally Brannon v. State, 202 Miss. 571, 582, 29 So.2d 916 (1947). "Authority" can be and has been said to mean the "[r]ight to exercise powers; to implement and enforce laws; to exact obedience; to command; to judge....[It is] [o]ften synonymous with power." Black's Law Dictionary (5th Ed.) In a free society, the courtroom "is a forum for the courteous and reasoned pursuit of truth and justice." Taylor v. Hayes, 418



U.S. 488, 503, 94 S.Ct. 2697, 41 L.Ed.2d 897 (1974). These concepts meaningfully embody that view of dignity and authority that should attend the proper, independent and fair discharge by the court of its duties under the rule of law. That view is hardly to be implemented platitudinally here, but in the warp and the woof of due process of law.

It is also useful to note at this point that where summary contempt is involved, the United States Supreme Court has indicated that it is wary of the power and cognizant of its potential for abuse. It, therefor, became established early in American jurisprudence that contempt limits a court in such cases to "the least possible power adequate to the end proposed." Anderson v. Dunn, 19 U.S. (6

Wheat.) 204, 231, 5 L.Ed. 242 (1821),<sup>6</sup> quoted, inter alia, in In Re Michael, 326 U.S. 224, 227, 66 S.Ct. 78, 90 L.Ed. 30 (1945); In Re Oliver, 333 U.S. 257, 274, 68 S.Ct. 499, 92 L.Ed. 682 (1948); Harris v. United States, 382 U.S. 162, 165, 86 S.Ct. 352, 15 L.Ed.2d 240 (1965); Shillitani v. United States, 384 U.S. 364, 371, 86 S.Ct. 1531, 16 L.Ed.2d 622 (1966). The purposes, nevertheless, of a criminal contempt order are to punish willful disregard of the authority of the court and to deter the occurrence of similar derelictions. United States v. United Mine Workers, 330 U.S. 258, 302-

---

<sup>6</sup>In Anderson v. Dunn, 19 U.S. (6 Wheat.) 204, 227, 5 L.Ed. 242 (1821), the court also said that courts "by their very creation [are vested] with power to impose silence, respect, and decorum, in their presence, and submission to their lawful mandates...." See also Young v. United States ex. rel. Vuitton et Fils S.A., 481 U.S. 787, 798, 107 S.Ct. 2124, 95 L.Ed.2d 740 (1987).

303, 67 S.Ct. 677, 91 L.Ed. 884 (1947); In re Irving, 600 F.2d 1027, 1037 (2d Cir. 1979), cert. denied, 444 U.S. 866 100 S.Ct. 137, 62 L.Ed.2d 89 (1979). Only recently, the United States Supreme Court has observed that "[t]he underlying concern that gave rise to the contempt power was not, however, merely the disruption of court proceedings. Rather, it was disobedience to the orders of the judiciary, regardless of whether such disobedience interfered with the conduct of trial." Young v. United States ex rel. Vuitton et Fils S.A., 481 U.S. 787, 798, 107 S.Ct. 2124, 95 L.Ed.2d 740 (1987).<sup>7</sup>

---

<sup>7</sup>In Young v. United States ex rel. Vuitton et Fils S.A., 481 U.S. 787, 795, 107 S.Ct. 2124, 95 L.Ed.2d 740 (1987), the court also noted "'[t]hat the power to punish for contempt is inherent in all courts, has been many times decided and may be regarded as settled law. It is essential to the administration of justice.'" See also Gompers v. Bucks Stove & Range Co., 221 U.S. 418, 450, 31 S.Ct. 942, 55 L.Ed. 797 (1911).

The American Bar Association Standards

There can be little doubt that an attorney may be, and should be, zealous in his representation of a client and "[f]ull enjoyment of that right, with due allowance for the heat of controversy, will be protected by appellate courts when infringed by trial courts." Sacher v. United States, 343 U.S. 1, 9, 72 S.Ct. 451, 96 L.Ed. 717 (1952); see People v. DeJesus, 42 N.Y.2d 519, 369 N.E.2d 752, 399 N.Y.S.2d 196 (1977). "The arguments of a lawyer in presenting his client's case strenuously and persistently cannot

---

for Criminal Justice (2d Ed.Sup. 1982), Special Functions of the Trial Judge, Standard 6-4.1, entitled "Inherent power of the court," provides: "The court has the inherent power to punish any contempt in order to protect the rights of the defendant and the interests of the public by assuring that the administration of criminal justice shall not be thwarted. The trial judge has the power to cite and, if necessary, punish summarily anyone who, in the judge's presence in open court, willfully obstructs the course of criminal proceedings."

amount to a contempt of court so long as the lawyer does not in some way create an obstruction which blocks the judge in the performance of his judicial duty." In re McConnell, 370 U.S. 230, 236, 82 S.Ct. 1288, 8 L.Ed.2d 434 (1962); In re Meizlish, 72 Mich.App. 732, 736, 250 N.W.2d 525 (1977). The attorney's right to be zealous, vigorous, persistent and complete in the representation of a client is not, however, unlimited. That representation must be within the bounds of the law. "[A]n attorney as an officer of the court should be held to a higher standard of courtroom conduct than a layman." Commonwealth v. Stevenson, 482 Pa. 76, 90, 393 A.2d 386 (1978). As an officer of the court, he must "preserve and promote the efficient operation of our system of justice." Chapman v. Pacific Telephone and Telegraph Co., 613

F.2d 193, 197 (9th Cir. 1979); see Maness v. Meyers, 419 U.S. 449, 95 S.Ct. 584, 42 L.Ed.2d 574 (1975); Cologne v. Westfarms Associates, 197 Conn. 141, 148, 496 A.2d 476 (1985).

On the matter of "courtroom decorum," an attorney "[a]s an officer of the court...should support the authority of the court and the dignity of the trial court by strict adherence to the rules of decorum and by manifesting an attitude of professional respect toward the judge, opposing counsel, witnesses, jurors, and others in the courtroom." American Bar Association Standards for Criminal Justice (2d Ed.Sup. 1982), The Defense Function, Standard 407.1. The Code of Professional Conduct provides, inter alia, that a "lawyer shall not...(c) [e]ngage in conduct intended to disrupt a tribunal." Code of Professional

Conduct Rule 3.5(c). It also provides that "[i]t is professional misconduct for a lawyer to...(d) engage in conduct that is prejudicial to the administration of justice." Code of Professional Conduct Rule 8.4(d). It is appropriate to consider and apply ethical benchmarks, as well as case law, when determining whether an attorney's conduct is inappropriate to his role and thus constitutes contumacious behavior-all within the rule of law.

As to the court, "[t]he role of the Trial Judge is neither that of automaton or advocate'...nor is a judge merely an 'umpire in a forensic encounter' but '[h]e is a minister of justice' and in 'whatever he does...the trial judge should be cautious and circumspect in his language and conduct.'" State v. Fernandez, 198 Conn. 1, 10, 501 A.2d 1195



(1985); State v. Woolcock, 201 Conn. 605, 622, 518 A.2d 1377 (1986). "'A judge...should conduct himself at all times in a manner that promotes public confidence in the integrity and impartiality of the judiciary.'...The trial judge should be the exemplar of dignity and impartiality." Swenson v Dittner, 183 Conn. 289, 297, 439 A.2d 334 (1981); State v. Echols, 170 Conn. 11, 13-14, 364 A.2d 225 (1975). The trial judge has the obligation to use his or her power to prevent distractions from and disruptions of the trial. Where the judge decides to impose sanctions for misconduct, "ordinarily [the judge should] impose the least severe sanction appropriate to correct the abuse and to deter repetition..." American Bar Association Standards for Criminal Justice (2d Ed.Sup. 1982), Special

Functions of the Trial Judge, Standard 6-3.3;<sup>8</sup> see Commonwealth v. Garrison, 478 Pa. 356, 366, 386 A.2d 971 (1978); Burgess v. Towne, 13 Wash.App. 954, 960, 538 P.2d 559 (1975).

In addition, it is proper to note that "[t]he law of contempt is not made for the protection of judges who may be sensitive to the winds of public opinion.

---

<sup>8</sup>The American Bar Association Standards for Criminal Justice (2d Ed.Sup. 1982), Special Functions of the Trial Judge, Standard 6-3.3, entitled "Judge's use of powers to maintain order," provides: "The trial judge has the obligation to use his or her judicial power to prevent distractions from and disruptions of the trial. If the judge determines to impose sanctions for misconduct affecting the trial, the judge should ordinarily impose the least severe sanction appropriate to correct the abuse and to deter repetition. In weighing the severity of a possible sanction for disruptive courtroom conduct to be applied during the trial, the judge should consider the risk of further disruption, delay, or prejudice that might result from the character of the sanction or the time of its imposition."

Judges are supposed to be men of fortitude, able to thrive in a hardy climate." Craig v. Harney, 331 U.S. 367, 376, 67 S.Ct. 1249, 91 L.Ed. 1546 (1947). They must be on guard against confusing offenses to their sensitivities with the obstruction of justice. In re Little, 404 U.S. 553, 555, 92 S.Ct. 659, 30 L.Ed.2d 706 (1972). Indeed, "[a] court of law is not the personal fiefdom of the individual who happens to be sitting at the bench." Edmunds v. Chang, 365 F.Supp. 941, 948 (D.Haw. 1973), rev'd on other grounds, 509 F.2d 39 (9th Cir.), cert. denied, 423 U.S. 825, 96 S.Ct. 39, 46 L.Ed.2d 41 (1975). The trial judge, nevertheless, has the duty to deter and correct misconduct of attorneys with respect to their obligations as officers of the court to support the authority of the court and enable the trial to proceed

with dignity. American Bar Association Standards of Criminal Justice 2d Ed.Sup. 1982), Special Functions of the Trial Judge, Standard 6-3.5.<sup>9</sup> In Sacher v. United States, supra, 13, while

---

<sup>9</sup>The American Bar Association Standards for Criminal Justice (2dEd.Sup. 1982), Special Functions of the Trial Judge, Standard 6-3.5, entitled "Deterring and correcting misconduct of attorneys," provides: "The trial judge should require attorneys to respect their obligations as officers of the court to support the authority of the court and enable the trial to proceed with dignity. When an attorney causes a significant disruption in a criminal proceeding, the trial judge, having particular regard to the provisions of standard 6-3.3, should correct the abuse, and if necessary, discipline the attorney by use of one or more the following sanctions:

"(a) censure or reprimand;

"(b) citation or punishment for contempt;

"(c) removal from the courtroom;

"(d) suspension for a limited time of the right to practice in the court where the misconduct occurred if such sanction is permitted by law; and

"(e) informing the appropriate disciplinary bodies in every jurisdiction where the attorney is admitted to practice of the nature of the attorney's misconduct and of any sanction imposed."

recognizing the duty of the trial judge to protect fully an attorney's right to represent his client vigorously, the court also acknowledged the duality of the role of an attorney, as an officer of the court as well as an advocate. In dealing with circumstances involving a potential contempt of an attorney, trial judges should remain aware that an attorney is a vital component of our legal system unlike that of a criminal defendant or a party to a civil action.

The remarks of the trial court and the petitioner, as well as the action of the court on November 10, 1988, have already been referred to. To these must be added that during the petitioner's "outburst" the trial court later said that the petitioner's voice was "elevated" and that he "threw" his pencil on the counsel

table.<sup>10</sup> This conduct can technically be

---

<sup>10</sup>At the November 15, 1988 hearing, counsel for the petitioner characterized his client's conduct on November 10, 1988, as an "outburst." He also noted that he had read the transcript of November 10, 1988, and that he understood "from speaking to other people who were here that the way [the petitioner] expressed himself was worse than what you see in black and white." The general rule is that the admissions of an attorney are imputed to his client. Lafayette Bank & Trust Co., v. Aetna Casualty & Surety Co., 177 Conn. 137, 140, 411 A.2d 937 (1979); see 7 Am.Jur.2d, Attorneys at Law Section 136.

We note that it was not until November 28, 1988, at least thirteen days after the trial court imposed the fine upon the petitioner, that he filed a motion for articulation in which he asked for a written articulation "of the nature of the legal basis for the sanctions placed upon him for conduct which transpired on November 10, 1988." That motion also "specifically" requested "that the court apprise him as to whether its action was civil or criminal contempt and whether if of a criminal nature, the action was taken under Connecticut Practice Book Section 988. Alternatively, if no contempt was found, [petitioner requested] whether the aforementioned action was taken under Connecticut General Statutes Section 51-84."

The trial judge's articulation stated that the "proceedings were Summary Criminal Contempt under P.B. Sec. 988." It also said that "[t]he contempt was self-evident. The court imposed a fine

said not to have taken place during the "trial." A criminal "trial" may be said to be those proceedings to determine the guilt or innocence of an accused and ordinarily ends with the verdict or other decision of the trier of fact. See People v. Smith, 4 Cal.App.3d 403, 410, 84 Cal.Rptr. 412 (1970); State v. Drake, 259 N.W.2d 862, 868 (Iowa 1977); State v. Johnson, 363 So.2d 458, 461 (La. 1978); Black's Law Dictionary (5th Ed.); cf. People v. Betillo, 53 Misc.2d 540, 279 N.Y.S.2d 444 (1967). The petitioner's conduct took place immediately after sentencing. A sentence is the judgement of the court formally pronounced which "award[s] the punishment to be inflicted." Belden v. Hugo, 88 Conn. 500,

---

of \$100 in punishment of said contempt to uphold the dignity of the court. State v. Jackson, 147 Conn. 167, 169 [158 A.2d 166] (1960)."



501, 91 A. 369 (1914). The petitioner's conduct took place while the sentencing court was "in session" when the court was actively presiding while engaged in processing the business of the Superior Court.

It is against this background and the legal and ethical benchmarks that we must now determine whether the petitioner's conduct in open court on November 10, 1988, was contumacious because it went beyond the permissible parameters of advocacy and, thus, a contempt of court. We answer this in the affirmative.

The petitioner's conduct took place in open court with the trial judge on the bench. It took place several weeks after a jury had found the petitioner's client, Walker, guilty; the trial was over. It took place as the trial judge was

attempting to instruct the clerk to give Walker notice of his rights to appeal, as provided for by Practice Book Section 945.<sup>11</sup> The court attempted to accomplish this twice and was interrupted by the petitioner on both occasions after the petitioner has already indicated that the sentence was "totally outrageous." Persisting after the second interruption of the court, the petitioner told the

---

<sup>11</sup>Practice Book Section 945, entitled "Notification of Right to Appeal," provides: "Where there has been a conviction after a trial, or where there has been an adverse decision upon an application for a writ of habeas corpus brought by or on behalf of one who has been convicted of a crime, it shall be the duty of the clerk of the court, immediately after the pronouncement of the sentence or the notice of a decision on the application for a writ of habeas corpus, to advise the defendant in writing of such rights as he may have to an appeal, of the time limitations involved, and of the right of an indigent person who is unable to pay the cost of an appeal to apply for a waiver of fees, costs, and expenses for the appointment of counsel to prosecute the appeal."

court that "there is no basis for the sentence just imposed," at which time the court warned him: "You're out of order." Rather than taking heed, the petitioner immediately responded, "I know I am, but there is no basis for that sentence."<sup>12</sup> (Emphasis added.) After acknowledging this, the trial court said: "The petitioner] is held in contempt..." Then the court again directed that the clerk notify the defendant Walker of his rights to appeal on the record.

This conduct was a criminal contempt, directed as it was against the dignity and authority of the court. Practice Book Section 985. "'From necessity the court must be its own judge of contempts committed within its presence.' Goodhart

---

<sup>12</sup>There is no claim by the petitioner on appeal that the sentence imposed was in excess of permissible statutory limits.

v. State, supra [62-63]." McClain v. Robinson, 189 Conn. 663, 669, 457 A.2d 1072 (1983). In In re Little, supra, 555-56, the court drew a distinction between the manner of the use of words by the alleged contemnors and doing so in a loud and boisterous manner as well as considering the effect of the conduct upon court proceedings. In reversing the state court judgment of contempt, the In re Little court said: "'It is not charged that [the alleged contemnors] disobeyed any valid court order, talked loudly, acted boisterously, or attempted to prevent the judge or any other officer of the court from carrying on his court duties....'" Id., 556. From what we have already noted, what occurred on November 10, 1988, is factually very different from In re Little. With reference to any "reason" for the petitioner's conduct, we

note that the record is absolutely barren of any "running, bitter controversy" between the trial judge and the petitioner even though the petitioner had only recently been through a murder trial before the same judge. See Naunchek v. Naunchek, 191 Conn. 110, 118-19, 463 A.2d 603 (1983); but cf. Taylor v. Hayes, 418 U.S. 488, 501, 94 S.Ct. 2697, 41 L.Ed.2d 897 (1974); Mayberry v Pennsylvania, 400 U.S. 455, 465, 91 S.Ct. 499, 27 L.Ed.2d 532 (1971). The petitioner's statements and his conduct, insofar as the record discloses, were "directed against the dignity and authority of the court" as an institution and not against the trial judge personally. Conduct which is directed against the dignity and authority of the court must be accompanied by the intent on the part of the alleged contemnor to do that. See

e.g. Matter of Pilsbury, 866 F.2d 22, 27 (2d Cir. 1989); United States v. Seale, 461 F.2d 345, 367-68 (7th Cir. 1972). While the United States Supreme Court in In re McConnell, supra, properly recognized the wide latitude to be permitted defense counsel in vigorously defending a client, "McConnell cannot be read as an immunization for all conduct undertaken by an attorney in good faith representation of his client...." In re Dellinger, 461 F.2d 389, 398 (7th Cir. 1972), aff'd, 502 F.2d 813 (7th Cir. 1974), cert. denied, 420 U.S. 990, 95 S.Ct. 1245, 43 L.Ed.2d 671 (1975). Conduct, when allegedly contumacious, cannot be justified merely by asserting that it was undertaken in good faith. State v. Campbell, 497 A.2d 467, 473 (Me. 1985). cert. denied, 474 U.S. 1032, 106 S.Ct. 594, 88 L.Ed.2d 5741 (1985). Under

the circumstances of this case, the petitioner "should reasonably have been aware that his conduct was wrongful." State v. Campbell, supra. He actually stated that he knew that he was "out of order" when the trial judge so cautioned him. There was thus nothing, insofar as the petitioner was concerned, that was unclear or indefinite about the trial court's caution. See Commonwealth v. Garrison, supra, 977.

To be held in criminal contempt, a contemnor must have the requisite intent; the conduct must be willful. Matter of Pilsbury, Supra; United States v. Thoreen, 653 F.2d 1332, 1342 (9th Cir. 1981); Sykes v. United States, 444 F.2d 928, 930 (D.C. Cir. 1971); Black's Law Dictionary (5th Ed.). Intent may be inferred from facts and circumstances. United States v. Thoreen, supra.



Generally, willfulness may be inferred from a reckless disregard for a court's order. United States v. Delahanty, 488 F.2d 396 (6th Cir. 1973); Sykes v. United States, supra; Murphy v. State, 46 Md.App. 138, 416 A.2d 748 (1980). Stated another way, "[t]he minimum requisite intent [for criminal contempt] is better defined as a volitional act by one who knows or should reasonably be aware that his conduct is wrongful." United States v. Seale, supra, 368. The requisite intent in this case may properly be inferred from the record of what occurred on November 10, 1988. An attorney need not be accorded one contemptuous remark before a judge may consider a summary contempt adjudication. Commonwealth v. Stevenson, 482 Pa. 76, 90, 393 A.2d 386 (1978). The danger of the allegedly contumacious conduct of offending the

authority and dignity of the court "'must not be remote or even probable, it must immediately imperil [it]....'" In re Little, supra, 555; accord In re McConnell, supra (contempt reversed where attorney failed to carry out threat to disobey court order); United States v. Seale, supra, 370. It is evident that the authority of the court in this case was 'significantly hindered by the petitioner's conduct. Despite the court's order to the clerk to notify the defendant Walker of his right to appeal, the petitioner's conduct obstructed the execution of that valid order. This was not a mere affront to the sensibilities of the trial judge qua trial judge; it directly hindered and interfered with the Superior Court qua Superior Court in its orderly processing of business before it.

This misconduct<sup>13</sup> led to obstruction and delay and was directed against the dignity of the court. The petitioner was guilty of criminal contempt in violation of Practice Book Section 985 and the trial court had the summary contempt power to deal with such contumacious conduct that took place in open court and in its immediate presence and view. See Naunchek v. Naunchek, supra, 113.

## II

It is appropriate here to advert to the judgment of contempt which this writ of error brings to this court. In his second claim of error, the petitioner maintains that he was held in contempt on

---

<sup>13</sup>One court has noted the difficulty of defining "misconduct" in the context of contempt and defined it "as conduct inappropriate to the particular role of the actor, be he judge, juror, party, witness, counsel or spectator." United States v. Seale, 461 F.2d 345, 366 (7th Cir. 1972).

November 10, 1988, without any opportunity to address the court prior to the adjudication of guilt. The state argues, to the contrary, that the trial court's statement that "[the petitioner] is held in contempt of this court" on November 10, 1988, was not a final adjudication of guilt because, otherwise, it would have been pointless to have afforded him an opportunity to obtain counsel and there would not have been any need to "continue and finish" the proceedings as the court was prepared to do on November 10, 1988. The state claims, accordingly, that the final adjudication of guilt did not take place until the conclusion of the hearing on November 15, 1988. It contends that the petitioner incorrectly claims that he was not given the opportunity because the court's statement on November 10, 1988,

i.e., "[h]e is held in contempt" did not constitute a final adjudication of guilt. The state maintains rather that the final adjudication of guilt did not occur until November 15, 1988, at which time the petitioner was represented by counsel who addressed the court and the petitioner himself spoke on his own behalf.<sup>14</sup>

Although the court, in its articulation, said that "[the petitioner] was held in contempt [on November 10 1988]," a writ of error lies only from a final judgment and for errors of law

---

<sup>14</sup>We note that during the hearing of November 15, 1988, counsel for the petitioner said, inter alia, to the court: "I have read the transcript of what occurred Thursday. I was not, of course, there. I asked the court before, and I will ask again, to consider changing its ruling." It is fair to say that at the hearing of November 15, 1988, which was the date to which the matter had been continued at the request of petitioner's counsel, the latter asked the court to open and change its ruling of November 10, 1988.

apparent on the face of the record. Geddes v. Sibley, 116 Conn. 22, 24, 163 A. 596 (1932). Even though the petitioner was held in contempt on November 10, 1988, it is evident, and the petitioner does not contend otherwise, that there was no final judgment on that date from which a writ of error would lie. This is so because no sanction or punishment had yet been imposed and, therefore, there had been no final judgment disposing of the matter. State v. Curcio, 191 Conn. 27, 31, 463 A.2d 566 (1983); see Barbato v. J. & M. Corporation, 194 Conn. 245, 247-48, 478 A.2d 1020 (1984). No final judgment existed in this contempt proceeding until the court decided on November 15, 1988, not to change its earlier ruling but proceeded to final adjudication and imposed the sanction of the \$100 fine.

This, we submit, has significance on the remaining issues to be decided, particularly the petitioner's claim that the continuance to November 15, 1988, which he requested, all but attenuated the nature of the proceeding against him as one in summary criminal contempt and required, inter alia, the recusal of the trial judge.

### III

The petitioner next claims that the proceedings that culminated in the finding of summary criminal contempt were conducted in violation of his due process rights as set forth in Section 988 of the Practice Book and as afforded by the fourteenth amendment to the United States constitution and article first, section 8, of the Connecticut constitution.<sup>15</sup> In

---

<sup>15</sup>We need not discuss the petitioner's assertion concerning article first, section 8 of the Connecticut constitution. He provides no separate



making this claim, he maintains that the matter was "improperly adjudicated" before the same judge before whom the alleged contemptuous conduct occurred. The state, on the other hand, contends that the petitioner's adjudication of summary criminal contempt comported with the requirements of due process as provided in the United States and Connecticut constitutions and the Practice Book. In oral argument before this court, the state, while conceding that the "literal terms" of the Practice Book had not been complied with, argued

---

analysis under the Connecticut constitution of that matter as pertains to this claim. In any event, we note that we have said that the due process provisions of the United States and Connecticut constitutions generally have the same meaning and impose similar constitutional limitations. See Keogh v. Bridgeport, 187 Conn. 53, 59-60, 444 A.2d 225 (1982); State v. Brigandi, 186 Conn. 521, 542, 442 A.2d 927 (1982).

that the substance of the due process prescribed by the Practice Book had been fully extended to the petitioner.

The United States Supreme Court "has often recognized that the requirements of due process cannot be ascertained through mechanistic application of a formula." Groppi v. Leslie, 404 U.S. 496, 500, 92 S.Ct. 582, 30 L.Ed.2d 632 (1972). The essence of due process is fundamental fairness. United States ex rel. Crist v. Lane, 745 F.2d 476, 482 (7th Cir. 1984), cert. denied, 471 U.S. 1068, 105 S.Ct. 2146, 85 L.Ed.2d 503 (1985). Due process is an element that, when absent, produces the reaction given to that which is "shocking to the universal sense of justice." United States v. Russell, 411 U.S. 423, 432, 93 S.Ct. 1637, 36 L.Ed.2d 366 (1973). Due process, unlike some legal rules, is not a technical

conception with a fixed content unrelated to time, place and circumstances. Williams v. Bartlett, 189 Conn. 471, 476, 457 A.2d 290, appeal dismissed, 464 U.S. 801, 104 S.Ct. 46, 78 L.Ed.2d 67 (1983); Lee v. Board of Education, 181 Conn. 69, 73, 434 A.2d 333 (1980).

The petitioner contends that he was denied the due process provided for by Practice Book Section 988. The state disagrees, claiming that he was accorded the required due process although it does concede that Section 988 was not followed literally. The lack of a "mechanistic application"; see Groppi v. Leslie, supra; of Practice Book Section 988 should not serve to defeat its due process requirements if they were substantively met. "The design of the rules of practice is both to facilitate business and to advance justice; 'they

will be interpreted liberally in any case where it shall be manifest that a strict adherence to them will work surprise or injustice.'" Snow v. Calise, 174 Conn. 567, 574, 392 A.2d 440 (1978). Rules of practice must be construed reasonably and with consideration of this purpose. Densmore v. Eyles, 32 Conn.Sup. 519, 521, 342 A.2d 62 (1975); 20 Am.Jur.2d, Courts Section 86. Rules "are a means to justice, and not an end in themselves; their purpose is to provide for a just determination of every proceeding." State v. Emmett, 108 N.J.Super. 322, 325, 261 A.2d 374 (1970).

The petitioner was not denied due process despite the trial court's failure to comply literally with Practice Book Section 988. His being held in contempt on November 10, 1988, cannot be said to have come as any surprise to him at that

time, because his conduct as an officer of the court was such that he acknowledged that he knew, as he should have, that he was "out of order." Moreover, there was nothing unclear or indefinite about that caution given by the court. Undaunted, however, he compounded the earlier "totally outrageous" tenor of his view of the sentence by saying thereafter "but there is no basis for that sentence." The trial court then said that "[the petitioner] is held in contempt of this court." The petitioner clearly understood the trial judge's perception of his conduct. See Pennsylvania v. Local Union 542, International Union of Operating Engineers, 552 F.2d 498, 512 n.20A (3d Cir.), cert denied, 434 U.S. 822, 98 S.Ct. 67, 54 L.Ed.2d 79 (1977). This scenario, in justice, cannot be said

to avoid the contempt merely because it did not include on November 10, 1988, "a recital of those facts in which the adjudication of guilt is based" as set out in Section 988. Significantly, on November 10, 1988, as well as on November 15, 1988, neither the petitioner nor his counsel ever claimed that he did not understand the factual scenario upon which the trial court "held" him in contempt on November 10, 1988. This is so especially when his counsel discussed the matter with the trial court in chambers on November 10, 1988, at which time his counsel was shown the court proceedings of that date. Further, with reference to a "recital" of the facts under Section 988, it must not be overlooked that on November 10, 1988, as well as on November 15, 1988, neither the petitioner nor his counsel, who are

both attorneys at law, ever claimed that there was a constitutional deprivation of notice of the factual scenario upon which the court "held" the petitioner in contempt on November 10, 1988, or for that matter, any violation of a statute or rule of practice.

As to that portion of Practice Book Section 988 that provides, "[p]rior to the adjudication of guilt the judicial authority shall...inquire as to whether [the petitioner] has any cause to show why he should not be adjudged guilty of contempt by presenting evidence of excusing or mitigating circumstances," there was no violation of the substance of this portion of the rule. Any claim that this portion was not literally complied with overlooks the fact that the petitioner availed himself of the opportunity on November 10, 1988, to



obtain counsel who forthwith came to court, spoke to the trial judge and was shown a copy of the transaction at that time. The trial court "was prepared to continue and finish the summary contempt proceedings at that time." We are entitled to presume that the trial court would have done so by according the petitioner the due process prescribed by Practice Book Section 988. See State v. Crumpton, 202 Conn. 224, 231, 520 A.2d 226 (1987); Brookfield v. Candlewood Shores Estates, Inc., 201 Conn. 1, 6, 513 A.2d 1218 (1986). We have had occasion to say: "'Where a contempt occurs in the presence of the court, no witnesses are required in proof of the contempt, and the court has inherent power to impose punishment on its own knowledge and of its own motion without formal presentation or hearing of the person

adjudged in contempt. State v. Jackson, 147 Conn. 167, 169, 158 A.2d 166 [1960]; McCarthy v. Hugo, 82 Conn. 262, 266, 73 A. 778 [1909]....' Whiteside v. State, [148 Conn. 77, 78, 167 A.2d 450 (1961)]." Moore v. State, 186 Conn. 256, 259, 440 A.2d 969 (1982). As already noted, petitioner's counsel, however requested and was granted a continuance until the next court day, at which hearing the petitioner and his counsel were fully heard before sentence was imposed. Once again there was no claim raised below that this portion of Practice Book Section 988 was violated.

In addition, Practice Book Section 988 permits a criminal contempt to be punished "summarily if the conduct constituting the contempt was committed in the actual presence of the court...and such punishment is necessary to maintain

order in the courtroom." Although punishment, in this case, was not imposed "summarily,"<sup>16</sup> in a technically temporal sense, it was imposed on the next court day to which it had been continued at the request of the petitioner's counsel. Of course, "[d]ue process cannot be measured in minutes and hours or dollars and cents." Traylor v. Hayes, supra, 500. Judgment forthwith is not required by the test of Practice Book section 988.

---

<sup>16</sup>"Summary" in this context has been said not to refer to the timing of the action with reference to the offence but refers rather to a procedure which dispenses with the formality, delay and digression that would result from the issuance of process, service of complaint and answer, holding hearings, to bring evidence, awaiting briefs and the like. Sacher v. United States, 343 U.S. 1, 9, 72 S.Ct. 451, 96 L.Ed.2d 717 (1952). The term refers to the character of the proceedings, not its timing; it does not demand instant punishment. People v. Fusaro, 18 Cal. App. 3d 877, 889, 956 Cal.Rptr. 368 (1971), cert. denied, 407 U.S. 912, 92 S.Ct. 2445, 32 L.Ed.2d 686 (1972).

Moreover, if the conduct of an attorney warranted immediate summary punishment, no possible prejudice to him could result from some delay if it were appropriate. The delay in imposing punishment here was appropriate, especially when it came about by the petitioner's request.

That the matter was not fully disposed of until November 15, 1988, cannot convert the contempt proceedings started on November 10, 1988, into one requiring a hearing before another judge. See Matter of DeMarco, 224 N.J.Super. 105, 118, 539 A.2d 1230 (1988). Some Courts have indicated that it is often useful to postpone disposition of a contempt charge against an attorney for a time after the alleged contumacious conduct. Sacher v. United States, supra 8-10; see Taylor v. Hayes, supra, 498-500; Pennsylvania v. Local Union 542, International Union of

Operating Engineers, supra, 512-14 (trial judge's twenty-four hour delay did not bar summary contempt proceeding); United States v. Schiffer, 351 F.2d 91, 93-94, 616 (9th Cir. 1965), cert. denied, 384 U.S. 1003, 86 S.Ct. 1914, 16 L.Ed.2d 1017, reh. denied, 385 U.S. 890, 87 S.Ct. 12, 17 L.Ed.2d 121 (1966); In re Osborne, 344 F.2d 611, 616 (9th Cir. 1965). One court has noted that when the misconduct is not likely to be repeated, withholding immediate action "has much in its favor....A deliberate course encourages a more dispassionate evaluation of the incident." In re Contempt of Ungar, 160 N.J.Super. 322, 333, 389 A.2d 995 (1978); see State v. Zoppi, 72 N.J.Super. 432, 436-37, 178 A.2d 632 (1962). In this case, the matter was finally disposed of on the next court day following the incident. The trial judge was prepared

to continue and finish the summary proceedings on the day the contempt occurred. He, however, decided to continue the matter at the request of the petitioner's counsel.<sup>17</sup> It would be anomalous to conclude that, having postponed a final disposition at the petitioner's request, the trial court's power to uphold the authority and dignity of the court in this summary criminal contempt proceeding thereby became so attenuated and enfeebled as to render it constitutionally impermissible for the

---

<sup>17</sup>There is no transcript of the circumstances of the granting of this continuance on November 10, 1988. We do, however, know that after the court recessed, following the contumacious conduct, an attorney representing the petitioner came to the trial judge's chambers. What transpired at that time is not in the transcript. The same attorney also represented the petitioner at the subsequent hearing on November 15, 1988. He, however, did not argue the writ of error before this court.

proceedings to be completed by this trial judge on the next court day.

Further, the petitioner advances another basis for arguing that a different judge should have conducted the hearing on November 15, 1988. The petitioner now claims, although he never did in the trial court, that his "remarks" were directed at the trial judge, specifically the sentence imposed. He argues that his "statement" and the trial judge's "reaction," i.e., immediately holding him in contempt, were, without question, "causally linked." The petitioner says that "[w]hile it is not at all apparent that [his] remarks constituted a 'personal attack' upon the trial judge, the circumstances reveal at minimum a disagreement between the Court and [the petitioner] to cause 'embroilment' of the



judge." The nature of the circumstances on the record, the petitioner contends, "reasonably suggests that marked personal feelings were potentially present on both sides." He maintains that it is apparent from the record that there was sufficient reason and opportunity to convene a hearing before a different judge. We note that, despite his present claim, there is nothing on the record to suggest that he or his counsel ever raised the matter of the recusal of the trial judge in the trial court.<sup>18</sup>

The concern of due process is the fair administration of justice. Mayberry v. Pennsylvania, supra 465. There are times when a judge, instead of representing "the impersonal authority of [the]

---

<sup>18</sup>The transcript of the hearing of November 15, 1988, is reproduced in the state's brief.

law,'" has permitted himself to"become so 'personally embroiled' with a lawyer in the trial as to make the judge unfit to sit in judgment on the contempt charge." Id.; Offutt v. United States, 348 U.S. 11, 17, 75 S.Ct. 11, 99 L.Ed. 11 (1954) (in Offutt, there was "an intermittently continuous wrangle on an unedifying level" between the trial judge and the attorney over the fourteen days of the trial). This case is not Offutt, as the trial judge in this case was "not an activist seeking combat [as in Offutt]," nor is there any claim of any difficulty between the trial judge and the petitioner during the underlying murder trial. Mayberry v. Pennsylvania, supra. This trial judge did not find himself in the position of the trial judge in Mayberry, where during the course of a twenty-one day criminal trial, the

defendant repeatedly insulted and slandered the trial judge calling him, inter alia, a "dirty son of a bitch," "a dirty tyrannical old dog," a "stumbling dog," a "fool," telling him to "go to hell," "You need to have some kind of psychiatric treatment. You're some kind of nut," "I ask Your Honor to keep your mouth shut while I'm questioning my own witness" and "you ought to be Gilbert and Sullivan the way you sustain the district attorney every time he objects to the questions. " Id., 457-62. In vacating the contempt convictions<sup>19</sup> and remanding for a trial before a different judge, the

---

<sup>19</sup>The trial judge in Mayberry v. Pennsylvania, 400 U.S. 455, 912 S.Ct. 499, 27 L.Ed.2d 532 (1971), found that Mayberry had committed one or more contempts on eleven of the twenty-one days of trial and sentenced him to not less than one and not more than two years for each of the eleven contempts or a total of eleven to twenty-two years.

United States Supreme Court said that a judge, "vilified as was this Pennsylvania judge, necessarily becomes embroiled in a running bitter controversy" and "[n]o one so cruelly slandered is likely to maintain that calm detachment necessary for fair adjudication." *Id.*, 465; see Naunchek v. Naunchek, *supra*, 117.

In circumstances where the final adjudication of criminal contempt and the sentencing are postponed until after the underlying trial, the later case of Taylor v. Hayes, *supra*, is instructive on the fundamental due process requirements of the fourteenth amendment in state court criminal contempt proceedings. Factually, Taylor is significantly distinguishable from this case.<sup>20</sup> In

---

<sup>20</sup>In Taylor v. Hayes, 418 U.S. 488, 94 S.Ct. 2697, 41 L.Ed.2d 897 (1974), the petitioner Taylor represented the accused in a Kentucky murder trial. During that "turbulent" trial, the respondent judge Hayes informed the petitioner on nine

Taylor, where final conviction and punishment were delayed and the petitioner was denied the opportunity, although he requested it, to respond to the trial judge, the court concluded that the petitioner "was entitled to more of a hearing and notice than he received

---

different occasions that he was in contempt of court. Id., 490. No sentence was imposed during the trial on any charge and petitioner was permitted to respond to most, but not all, of the charges. At the conclusion of the trial and in the presence of the jury that had rendered a guilty verdict, the trial judge made a statement concerning the petitioner's trial conduct. He also refused the petitioner's request to respond and imposed consecutive sentences on nine counts of contempt aggregating almost four and one-half years' imprisonment, including sentences of one year's imprisonment on each of two counts. Later, the respondent amended the judgment to eliminate the first contempt charge but was silent on whether all of the sentences were to run concurrently or consecutively. A few days after the original sentence, the respondent also barred the petitioner from practicing law in the respondent's division of the criminal branch of court.

prior to final conviction and sentence." Where conviction and punishment are delayed, Taylor noted that "'it is much more difficult to argue that action without notice or hearing of any kind is necessary to preserve order and enable [the court] to proceed with its business.'" Id., 498. Taylor then appropriately turned to Groppi's allusion to the circumstance that the contemnors in Sacher were "'given an opportunity to speak'" and the "'trial judge [in Sacher] would, no doubt[, ] have modified his action had their statements proved persuasive.'" Id.; see Groppi v. Leslie, Supra, 506 n.11. Drawing further on Groppi, Taylor stated that "Groppi counsels that before an attorney is finally adjudicated in contempt and sentenced after trial for conduct during trial, he should have reasonable notice

of the specific charges and opportunity to be heard on his own behalf" that could include, it said, inquiry that the "behavior at issue was not contempt but acceptable conduct of any attorney representing his client; or, he might present matters in mitigation or otherwise attempt to make amends with the court." Taylor v. Hayes, supra, 498, 499.

We recognize that there are cases where "contemptuous conduct, though short of personal attack, may still provoke a trial judge and so embroil him in controversy that he cannot 'hold the balance nice, clear and true between the State and the accused....' Tumey v. Ohio, 273 U.S. 510, 532 [47 S.Ct. 437, 71 L.Ed. 749] (1927)." Id., 501. The inquiry in making this ultimate judgment "must be not only whether there was actual bias on [the trial judge's] part, but also



whether there was 'such a likelihood of bias or an appearance of bias that the judge was unable to hold the balance between vindicating the interests of the court and the interests of the accused.' Ungar v. Sarafite, 376 U.S. 575, 588 [84 S.Ct. 841, 11 L.Ed.2d 921] (1964)." Id. The conduct of both the trial judge and the alleged contemnor are to be considered in the calculus of the ultimate determination of whether the trial judge is disqualified.

With these considerations in mind, we examine the record. It does not appear that the trial judge ever became embroiled in a "running controversy" with the petitioner. Moreover, the petitioner's conduct was not a "personal attack" on the trial judge as his brief all but explicitly concedes. In any event, even though short of a "personal

attack," the trial judge's reaction to the petitioner's conduct cannot fairly be said to have been such that the trial judge could not "'hold the balance nice, clear and true between the state and the [petitioner]..." Taylor v. Hayes, supra, 501. The record does not disclose, as it did in Taylor, "a mounting display of an unfavorable personal attitude...and his motives, sufficiently so that the contempt issue should have been finally adjudicated by another judge." Id., 501-502. Significantly, the petitioner does not refer to any instance on November 10, 1988, where the court became personally embroiled with the petitioner. See United States v. Renfro, 634 F.Sup. 1536 (W.D.Pa), aff'd, 806 F.2d 254 (3d Cir. 1986). Unlike the petitioner in Taylor, but like the petitioner in Ungar v. Sarafite, supra, the contempt of the

petitioner in this case did not proceed summarily to its conclusion in the temporal context, but he was given notice and afforded an opportunity for a hearing that was conducted in a judicial setting with proper decorum.

The transcript of the hearing of November 15, 1988,<sup>21</sup> also discloses that

---

<sup>21</sup>The transcript of the hearing of November 15, 1988, discloses the following:

"The Court: You wish to be heard?

"Mr. Klein: Yes, I do, your Honor.

"[I am] Gerald Klein and I represent Mr. Dodson as the court knows for the purpose of this proceeding.

"Your Honor, since Thursday, I had an opportunity to really educate myself on some of the statutes and cases that apply to contempt, which occurs before the court. I had briefly noted in chambers State versus Andrew Maliszewski 36 Conn. Supplement 547, which includes a very thorough discussion between civil and criminal contempt, and also between summary and non-summary contempt.

"I have read the transcript of what occurred Thursday. I was not, of course, there. I asked the court before, and I will ask again, to consider changing its ruling. It appears that Mr. Dodson was not expecting the legal justified sentence that the court imposed and reacted in an emotional way as attorneys

---

from time to time do. I apologize to the court on his behalf as he apologized to the court.

"I would like to ask the court to reconsider that, and if the court feels that some sanction is in order, I would again draw the court's attention to [Section] 51-84 of the General Statutes, which subject officers of this court, attorneys-at-law to certain rules and the court can fine any lawyer up to one hundred dollars or suspend or disbar that lawyer for an infraction of those rules, which is truly a civil matter. Any action under [General Statutes Sections] 51-33 or 51-33a would, of course, be in the nature of a criminal conviction. I would respectfully suggest to the court that that might be too harsh a penalty upon this young attorney, who has been a member of the bar five or six years and in my opinion has a good reputation and obviously one only has to glance at the transcript to see that he spoke out of line. These things happen from time to time and I haven't seen him in that type of a situation before, the many times I have seen him appear before many judges.

"Again, your Honor, [Section] 51-33 to so-called summary criminal contempt indicates that the court may punish by fine or imprisonment anyone who behaves contemptuously or in a disorderly manner up to one hundred dollars or six months in jail or both.

"The Practice Book section in dealing with this particular statute, Section 988 summary criminal contempt. Such punishment as appears before the court can take place if necessary to maintain order in the courtroom. A judgment of

---

guilty of contempt shall include recital of those facts on which the adjudication is based. Prior to the adjudication of guilt the judicial authority shall inform the defendant of the accusations against him and inquire as to whether he has any cause to show why he should not be adjudged guilty of contempt by presenting evidence of excusing or mitigating circumstances.

"Now, it is my understanding that [Section] 51-33a non-summary criminal contempt requires a warrant and filing of an information and obviously from my perspective in representing this man we don't want that to occur.

"I don't know if the state is interested in that type of prosecution. I doubt it, but if the court is going to proceed under [Section] 51-33 by way of mitigation, I think I have stated or I will put on the record what I told the court on Thursday in chambers.

"I had occasion to have a discussion with Mike Dodson earlier in the day about this case, which very coincidentally I know a lot about and as the State's Attorney knows, I represented Mr. Solomon, one of the victims. I previously represented Tracey Fisher and I just knew the cast of characters here. Now, [a] very minor personal problem was bothering him earlier in the day [that] may have contributed to his outburst in the courtroom.

"Again, I read the transcript and I understand from speaking to other people who were here, that the way he expressed himself was worse than what you see in black and white, but I would ask the court to consider the various options

---

apparently that the court would have here to fashion a sanction, if there is one, into a non-criminal situation which really if the court will not accept his belated apology or second apology, a more thorough apology to discipline him under [Section] 51-84 which calls for just a fine up to one hundred dollars.

"That is all I have to say.

"The Court: You have anything to say?

"Mr. Dodson: Yes, your Honor, please. I have a brief statement.

"May it please the court, what I said in court last Thursday was a spontaneous and emotional response to what I perceived as a gross injustice done to my client. No disrespect of the court was intended and if my remarks were interpreted as disrespect, I sincerely apologize to the court. On the other hand, to me silence in the face of injustice is acquiescence with it. To have said nothing would have been the easier and safer thing to do, but not something I could have done. As a zealous advocate of my client's interests, and as a human being, I had to let the court know what I perceived as an extreme miscarriage of justice. To that extent I have no regrets and I would do it again.

"Again, no disrespect shown to the court and I apologize.

"The Court: The statement contains portions that can be characterized as nothing less than unmitigated gall. Your statement concerning silence being acquiescence apparently is lack of recognition on your part that the process provides an appellate review, which is available to our client. Clients are not

petitioner's counsel had earlier asked the trial judge to "consider changing his ruling" of November 10, 1988, and that he also asked the trial court to consider doing so at the November 15, 1988 hearing. Petitioner's counsel spoke first and gave his argument for reconsideration, including the claim that the petitioner had reacted "in an emotional way" to the sentence imposed on Walker, which petitioner's counsel referred to as "legal[ly] justified." Counsel also apologized to the court on the petitioner's behalf. He referred to

---

to be served by outrageous outbursts of their lawyers during a session in Superior Court.

"The court will impose a fine of one hundred dollars. These proceedings shall be certified to the Judges of the Superior Court, State Bar Grievance Association and the Hartford County Bar for their permanent records."



certain statutes<sup>22</sup> on contempt and read from Practice Book Section 988 and asked that if the court were not going to accept his apology, then the petitioner be disciplined under General Statutes Section 51-84, "which calls for just a fine of one hundred dollars." That the petitioner did not know "the nature of [the] sanction" and that he asked for "clarification" at the hearing lacks merit. He had actual knowledge of the specific accusation.

That the petitioner was permitted to address the trial court at the hearing to urge that his behavior was "the acceptable conduct of an attorney representing his client," to "present

---

<sup>22</sup>Petitioner's counsel referred to General Statutes Sections 51-33, 51-33a and 51-84.

matters in mitigation"<sup>23</sup> or "otherwise attempt to make amends with the court." Taylor v. Haynes, supra, 499. The petitioner was thus given this hearing with the attendant right of allocution. See id., 500, Groppi v. Leslie, supra, 504; Weiss v. Burr, 484 F.2d 973, 987 (9th Cir. 1973) cert. denied, 414 U.S. 1161, 94 S.Ct. 924, 39 L.Ed.2d 115 (1974). Under due process concepts, it is appropriate not only to allow the alleged contemnor to be represented by counsel, but also to allow him "to retreat [if he so chooses] from his

---

<sup>23</sup>During his presentation, petitioner's counsel stated that he had spoken to the petitioner on November 10, 1988, at a time before the conduct involved in this appeal, and said that a "very minor personal problem was bothering [the petitioner] earlier in the day [that] may have contributed to his outburst in the courtroom." The petitioner never referred to any such "problem" when he addressed the court on November 15, 1988.

conduct, and to have the opportunity to correct misunderstandings on the part of the [trial] judge." Matter of DeMarco, 224 N.J.Super. 105, 120-21, 539 A.2d 1230 (1988); In re Kozlov, 156 N.J.Super. 316, 326, 383 A.2d 1158 (1978), rev'd on other grounds, 79 N.J. 232, 398 A.2d 882 (1979). In his remarks on November 15, 1988, the petitioner described his conduct of November 10, 1988, as "a spontaneous and emotional response to what he perceived as a gross injustice done to [his] client," that "[n]o disrespect of the court was intended" and "if [his] remarks were interpreted as disrespect, [he] sincerely apologize[d] to the court." He immediately continued, however, and said: "On the other hand, to me silence in the fact (sic) of injustice is acquiescence with it. To have said nothing would have been the easier and

safer thing to do, but not something I could have done. As a zealous advocate of my client's interests, and as a human being, I had to let the court know what I perceived as an extreme miscarriage of justice. To that extent I have no regrets and I would do it again. Again, no disrespect shown to the court and I apologize." (Emphasis added.) After hearing both the petitioner and his counsel, it is apparent that the trial court did not find their arguments "persuasive"; see Taylor v. Hayes, supra, 498; so as to cause it to change its ruling. The trial court then imposed the punishment of a fine.

We recognize that the "sole credible basis for the summary contempt process is necessity, a need that the assigned role of the judiciary be not frustrated." In re Fair Lawn Education Assn., 63 N.J.

112, 114-15, 305 A.2d 72, cert. denied, 414 U.S. 855, 94 S.Ct. 155, 38 L.Ed.2d 104 (1973). Although this judicial "power is as ancient as the courts to which it is attached and 'as ancient as any other part of the common law'"; In re Caruba, 139 N.J.Eq. 404, 427, 51 A.2d 446, aff'd, 140 N.J.Eq. 563, 55 A.2d 289 (1947), cert. denied 335 U.S. 846, 69 S.Ct. 69, 93 L.Ed. 396 (1948), quoting Rex v. Almon, 97 Eng.Rep. 94, 99 (K.B. 1765); it should be exercised sparingly and in accordance with the requirements of due process. Summary criminal contempt should not be employed as a means of abuse but courts have the right in appropriate circumstances to employ it to vindicate their dignity and authority upon any interference and to go no further. See R. Goldfarb, The Contempt Power (1963) p. 182. It follows from

what we have said that this was an appropriate case for its exercise and that that exercise comported with the applicable law.

There is no error.

In this opinion, PETERS, C.J., CALLAHAN, GLASS, COVELLO and HULL, Js., concurred.

SHEA, J., dissenting. I agree with the majority that there is a sufficient basis in the record to support the trial court's finding of contempt. I disagree, however, with its conclusion that "there was no violation of the substance" of the following provision of Practice Book Section 988 prescribing the procedure for a summary criminal contempt proceeding: "Prior to the adjudication of guilt the judicial authority shall inform the defendant of the accusation against him and inquire as to whether he has any

cause to show why he should not be adjudged guilty of contempt by presenting evidence of excusing or mitigating circumstances."

The state concedes that this provision, which incorporates the basic constitutional requirements of notice and hearing contained in our federal and state constitutions, "was not followed literally." Indeed, the record demonstrates that the trial court found the petitioner in contempt without any prior notice or opportunity to be heard before that finding was made on November 10, 1988.

The majority attempts to justify this oversight of the trial court by relying upon the proceedings of November 15, 1988, when the petitioner was given an opportunity to try to persuade the judge to reverse the finding of contempt that

he had previously made. The majority does not explain how this proceeding can be deemed to cure the deficiency in the earlier proceeding when the contempt finding was made. Anyone familiar with human nature must recognize the herculean task imposed upon a litigant seeking reversal from the same trier of a finding of fact that has been publicly announced. Such a belated opportunity to be heard is not the equivalent of the notice and hearing prior to any adjudication of guilt that Section 988 prescribes.

The evident purpose of the rule is to bar any adjudication of summary criminal contempt without prior notice that the offending person may be held in contempt and without allowing him to present "excusing or mitigating circumstances." Since we have the rule, the trial judge should have followed it or, as an



alternative, should have referred the matter for prosecution under Practice Book Section 991 and 992<sup>1</sup> as a nonsummary criminal contempt before another judge.

Accordingly, I dissent.

---

<sup>1</sup>"[Practice Book] Sec. 991. --  
NATURE OF PROCEEDINGS

"A criminal contempt not adjudicated under Sec. 987 shall be prosecuted by means of an information. The judicial authority may, either upon his own order or upon the request of the prosecuting authority, issue an arrest warrant for the accused. The case shall proceed as any other criminal prosecution under these rules and the General Statutes."

"[Practice Book] Sec. 992. --  
DISQUALIFICATION OF JUDICIAL AUTHORITY

"The trial and all related proceedings on which the contempt charges are based shall be heard by a judicial authority other than the trial judge or the judicial authority who had issued the order which was later disobeyed."

STATE OF CONNECTICUT

SUPREME COURT

NO. 13622

IN RE MICHAEL DODSON

: APRIL 25, 1990

O R D E R

THE MOTION OF THE PETITIONER, FILED  
APRIL 6, 1990, FOR REARGUMENT AND  
RECONSIDERATION, HAVING BEEN PRESENTED TO  
THE COURT, IT IS HEREBY O R D E R E D  
DENIED.

BY THE COURT

/S/ Francis J. Drumm  
CHIEF CLERK

NOTICE SENT: 4-25-90  
SLITT & GERACE  
JAMES THOMAS, A.S.A.  
TIMOTHY SURGRUE, D.A.S.A.  
STEVEN M. SELLERS, A.S.A.  
CLERK HARTFORD J.D.  
HON. JAMES HIGGINS  
REPORTER OF JUDICIAL DECISIONS

SUPERIOR COURT  
STATE OF CONNECTICUT  
JUDICIAL DISTRICT OF HARTFORD  
DECEMBER 9, 1988

DOCKET NO. 5 51 07  
IN RE  
CRIMINAL CONTEMPT PROCEEDINGS  
MICHAEL J. DODSON

ARTICULATION

The respondent-attorney represented the defendant in an murder trial. Upon conviction, the sentencing hearing was held on November 10, 1988. The court imposed sentence.

Immediately thereafter, the respondent proceeded to speak on the record, without leave of the court, and the following is a transcript thereof:

MR. DODSON: I think it is most unusual. I think that is totally outrageous. The court can do--

THE COURT: You may notify the defendant--

MR. DODSON: Thirty years more on the

same set of facts, I think --

THE COURT: Notify the defendant of his rights to appeal.

MR. DODSON: There is no basis--

THE COURT: You're out of order.

MR. DODSON: I know I am, but there is no basis for that sentence.

THE COURT: He is held in contempt of this court.

MR. DODSON: I apologize for my remarks.

THE COURT: Notify the defendant of his rights of appeal on the record.

During said outburst by the respondent his voice was elevated and he threw his pencil on the counsel table. As the record indicates, he interrupted the court's attempt to process the appeal notice to the defendant and he disregarded the court's warning that he "was out of order..." He was held in

contempt of court.

The court thereupon recessed. The respondent was asked to remain in the courtroom. Telephone access was allowed for him to obtain counsel, if he desired. Shortly thereafter, Attorney Klein arrived and came to chambers to indicate his representation of the respondent-attorney. A copy of the transcript of the prior brief proceedings had been prepared and was shown to Attorney Klein. The court was prepared to continue and finish the summary contempt proceedings at that time. Request by Attorney Klein for a continuance to Tuesday, November 15, 1988 was granted (the next day was Friday - a holiday and on the following Monday no court was scheduled due to State Bar meeting).

These proceedings were Summary Criminal Contempt under P.B. Section 988. The

contempt was self-evident.

Thereafter, a short hearing was held on November 15, 1988. The respondent and his counsel each made statements of record. The court imposed a fine of \$100.00 in punishment of said contempt, to uphold the dignity of the court. State v. Jackson, 147 Conn. 167, 169 (1960).

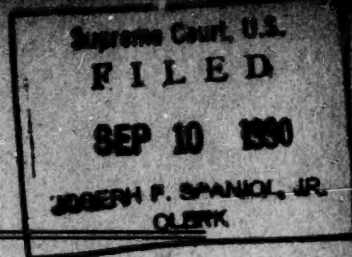
A partial copy of the proceedings of November 10, 1988 and the hearing of November 15, 1988 are annexed hereto and incorporated herein.

Higgins\_\_\_\_\_, J.  
Higgins



③

No. 90-190



In The  
**Supreme Court of the United States**  
October Term, 1989

---

MICHAEL J. DODSON,

*Petitioner,*

v.

SUPERIOR COURT OF THE  
STATE OF CONNECTICUT,

*Respondent.*

---

**BRIEF IN OPPOSITION TO THE  
PETITION FOR A WRIT OF CERTIORARI  
TO THE CONNECTICUT SUPREME COURT**

---

Counsel of Record  
for Respondent:

GEOFFREY E. MARION  
Assistant State's Attorney  
Appellate Unit  
Office of the Chief State's  
Attorney  
340 Quinpiac Street  
P.O. Box 5000  
Wallingford, CT 06492  
(203) 265-2373

---



## QUESTIONS PRESENTED

I. Whether The Decision Of The Connecticut Supreme Court, Affirming the Trial Judge's Finding Of Summary Criminal Contempt Against The Petitioner, Violates The Petitioner's First Amendment Right To Expression And Sixth Amendment Right To Counsel?

II. Whether The Connecticut Supreme Court Erred In Holding That The Procedure By Which The Trial Judge Adjudicated And Punished The Petitioner Of Summary Criminal Contempt Comported With The Due Process Requirements Of The Fourteenth Amendment?



## TABLE OF CONTENTS

	PAGE
TABLE OF AUTHORITIES . . . . .	i
CONSTITUTIONAL PROVISIONS AND RULES INVOLVED . . . . .	iv
OPINION BELOW . . . . .	viii
I. STATEMENT OF THE CASE . . . . .	1
II. REASONS FOR DENIAL OF THE PETITION . . . . .	4
A. The Connecticut Supreme Court's Finding Of Contempt Is Consistent With Federal Precedent And Does Not Present Any Federal Question Worthy of Certiorari Review . . . . .	4
1. The Judgment Of Contempt Presents A Unique, Fact-Bound Determination Of State Law. . . . .	5
2. The Petitioner Fails To Demonstrate Any Conflict Between The Decision Of The Connecticut Supreme Court And The Controlling Precedents Of This Court . . . . .	7

3.	The Petitioner's First and Sixth Amendment Claims Were Not Raised Below And, Therefore, Should Not Be Reviewed By This Court . . . .	12
----	---	----

B.	The Holding Of The Connecticut Supreme Court Is Consistent With The Principles Of Due Process Established By This Court . . . . .	14
----	---	----

CONCLUSION ;	. . . . .	20
--------------	-----------	----

## TABLE OF AUTHORITIES

### PAGE

#### CASES

<u>Fay v. Noia</u> , 373 U.S. 391, 83 S.Ct. 822 (1963) . . . . .	14
<u>Cardinale v. Louisiana</u> , 394 U.S. 437, 89 S.Ct. 1162 (1969) . . . . .	13
<u>Groppi v. Leslie</u> , 404 U.S. 496, 92 S.Ct. 582 (1972) . . . . .	15, 18
<u>Hannah v. Larche</u> , 363 U.S. 420, 80 S.Ct. 1502 (1960) . . . . .	15
<u>Illinois v. Gates</u> , 462 U.S. 213, 103 S.Ct. 2317 (1983) . . . . .	14
<u>In re Dodson</u> , 214 Conn. at 349 (1983) . . . . .	3, 4, 9, 10, 11
<u>In re McConnell</u> , 370 U.S. 230, 82 S.Ct. 1288 (1962) . . . . .	9, 11, 20
<u>Mayberry v. Pennsylvania</u> , 400 U.S. 455, 91 S. Ct. 499 (1971) . . . . .	18
<u>Meachum v. Fano</u> , 427 U.S. 215, 96 S.Ct. 2532 (1976) . . . . .	16
<u>Michigan v. Long</u> , 463 US. 1032, 103 S.Ct. 3469 (1983) . . . . .	14

<u>Pennsylvania v. Local Union</u>	542,
<u>International Union of Operating Engineers</u> , 552 F.2d 498, (3d Cir.), <u>cert denied</u> , 434 U.S. 822 (1977)	. . . 18
<u>Sacher v. United States</u> , 343 U.S. 1, 72 S.Ct. 451 (1952)	. . . . . 9
<u>Taylor v. Hayes</u> , 418 U.S. 491, 94 S.Ct. 2697 (1974)	. . . . . 18
<u>Ungar v. Sarafite</u> , 376 U.S. 575, 84 S.Ct. 841 (1964)	. . . . . 18
<u>United States v. Johnston</u> , 286 U.S. 220, 45 S.Ct. 496 (1925)	. . . . . 6
<u>United States v. United Mine Workers</u> , 330 U.S. 258, 67 S.Ct. 677 (1947)	. . . 8
<u>Young v. United Stated ex rel.</u> <u>Vuitton et Fils S.A.</u> , 481 U.S. 787, 107 S.Ct. 2124 (1987)	. . . . . 7, 8

## RULES OF COURT

Connecticut Practice Book §985	. . . 3, 6
Connecticut Practice Book §988	. 2, 4, 17

## CONSTITUTIONAL PROVISIONS

First Amendments . . . . .	5, 12, 13
Sixth Amendment . . . . .	5, 12, 13
Fourteenth Amendment . . . . .	4

**CONSTITUTIONAL PROVISIONS  
AND RULES INVOLVED**

**First Amendment to the United States  
Constitution**

Congress shall make no law respecting an establishment of religion, or prohibiting the free exercise thereof; or abridging the freedom of speech, or of the press; or the right of the people peaceably to assemble, and to petition the Government for a redress of grievances.

**Sixth Amendment to the United States  
Constitution**

In all criminal prosecutions, the accused shall enjoy the right to a speedy and public trial, by an impartial jury of the State and district wherein the crime shall have been committed, which district shall have been previously ascertained by law, and to be informed of the nature and cause of the accusation; to be confronted



with the witnesses against him; to have compulsory process for obtaining witnesses in his favor, and to have the Assistance of Counsel for his defense.

**Fourteenth Amendment to the United States Constitution**

Section 1. All persons born or naturalized in the United States, and subject to the jurisdiction thereof, are citizens of the United States and of the State wherein they reside. No State shall make or enforce any law which shall abridge the privileges or immunities of citizens of the United States; nor shall any State deprive any person of life, liberty, or property, without due process of law; nor deny to any person within its jurisdiction the equal protection of the laws.

## **Rule 10**

### **CONSIDERATIONS GOVERNING REVIEW ON WRIT OF CERTIORARI**

1. A review on writ of certiorari is not a matter of right, but of judicial discretion. A petition for a writ of certiorari will be granted only when there are special and important reasons therefor. The following, while neither controlling nor fully measuring the Court's discretion, indicate the character of reasons that will be considered:

(a) When a United States court of appeals has rendered a decision in conflict with the decision of another United States court of appeals on the same matter; or has decided a federal question in a way in conflict with a state court of last resort; or has so far departed from the accepted and

usual course of judicial proceedings, or sanctioned such a departure by a lower court, as to call for an exercise of this Court's power of supervision.

(b) When a state court of last resort has decided a federal question in a way that conflicts with the decision of another state court of last resort or of a United States court of appeals.

(c) When a state court or a United States court of appeals has decided an important question of federal law which has not been, but should be, settled by this Court, or has decided a federal question in a way that conflicts with applicable decisions of this Court.

**OPINION BELOW**

The opinion of the Connecticut Supreme Court is reported at 214 Conn. 344, \_\_\_ A.2d \_\_\_ (1990), and is reproduced in the petitioner's appendix at 2a. The petitioner's motion for reargument and reconsideration was denied by the Supreme Court on April 25, 1990. A copy of the order denying the motion is reproduced in the petitioner's appendix at 78a.

## **I. STATEMENT OF THE CASE**

On November 10, 1988, during a sentencing hearing in a criminal matter before the Connecticut Superior Court, the petitioner, a member of the Connecticut Bar, was held in contempt for remarks directed to the court. Immediately following the petitioner's outburst, court was recessed and the petitioner was given the opportunity to obtain counsel. Counsel appeared and asked that the matter be continued until the next available court date, November 15, 1988.

On November 15, 1988 the trial court, after hearing the arguments of counsel for the petitioner and the petitioner himself, imposed a fine of one hundred dollars. On November 28, 1988 the petitioner filed with the trial court a motion for articulation of the legal basis for its actions of

November 10, 1988. In its written articulation (see Petitioner's Appendix at 79a), the trial court stated that the defendant was held in summary contempt pursuant to Connecticut Practice Book §988.<sup>1</sup>

On December 22, 1988 the petitioner filed a writ of error challenging the adjudication of contempt. The Connecticut Supreme Court, sitting en banc, heard oral

---

<sup>1</sup> Connecticut Practice Book § 988 provides:

"A criminal contempt may be punished summarily if the conduct constituting the contempt was committed in the actual presence of the court or the judicial authority and such punishment is necessary to maintain order in the courtroom. A judgement of guilty of contempt shall include a recital of those facts on which the adjudication of guilt is based. Prior to the adjudication of guilt the judicial authority shall inform the defendant of the accusation against him and inquire as to whether he has any cause to show why he should not be adjudged guilty of contempt by presenting evidence of excusing or mitigating circumstances."

argument on December 5, 1989. That Court affirmed the judgment of contempt on March 27, 1990, with one justice dissenting.

The Connecticut Supreme Court concluded that the conduct of the petitioner constituted contempt under Connecticut Practice Book §985.<sup>2</sup> In re Dodson, 214 Conn. at 349-360; Petitioner's Appendix at 11a - 36a. It further held that the proceedings culminating in the trial judge's finding of summary criminal contempt satisfied the due process rights encompassed in Connecticut Practice Book §988 and the Fourteenth Amendment to the United States Constitution. In re Dodson, 214 Conn. at

---

<sup>2</sup> Connecticut Practice Book § 985 provides:

"A criminal contempt is conduct that is directed against the dignity and authority of the court. The sanction for a criminal contempt is punitive in order to vindicate the authority of the court."

## **II. REASONS FOR DENIAL OF THE PETITION**

### **A. The Connecticut Supreme Court's Finding Of Contempt Is Consistent With Federal Precedent And Does Not Present Any Federal Question Worthy of Certiorari Review**

The petitioner claims that the decision below conflicts with the decisions of this Court by providing unfettered judicial discretion in summary contempt matters, thereby infringing on the constitutional rights associated with zealous advocacy. In support of this contention the petitioner offers two overlapping arguments. First, he argues that the Connecticut Supreme Court has defined "contempt" in an overly broad manner and, as a result, has imposed a chilling effect on the vigorous attorney advocacy protected by the first and sixth amendments. Second, he argues that his



conduct failed, as a matter of law, to constitute contempt. The petitioner's tenuous claim does not warrant review by this Court for several reasons.

**1. The Judgment Of Contempt Presents A Unique, Fact-Bound Determination Of State Law.**

The Connecticut Supreme Court held that the conduct of the petitioner before the trial court at a sentencing hearing constituted contempt within the meaning of Connecticut Practice Book §985, as it was "directed against the dignity and authority of the court." The holding below turns on that court's application of the facts of this case to the terms of the Connecticut Practice Book within well-established constitutional boundaries. This Court does "not grant a certiorari to review evidence and discuss specific facts." United States v. Johnston, 286 U.S. 220, 45 S.Ct. 496, 497

(1925). The state supreme court is the final interpreter of the meaning of its rules and its determination on the question of contempt does not present a federal question worthy of certiorari review. Because the Connecticut Supreme Court has not decided a federal question, the petitioner's alleged basis for certification is insubstantial on its face.

**2. The Petitioner Fails To Demonstrate Any Conflict Between The Decision Of The Connecticut Supreme Court And The Controlling Precedents Of This Court**

"[T]he power to punish for contempt is inherent in all courts, has been many times decided and may be regarded as settled law. It is essential to the administration of justice." Young v. United States ex rel. Vuitton et Fils S.A., 481 U.S. 787, 795, 107 S.Ct. 2124 (1987). A criminal contempt order serves the purposes of punishing

willful disregard of the authority of the court and deterring the occurrence of similar derelictions. United States v. United Mine Workers, 330 U.S. 258, 302-303, 67 S.Ct. 677 (1947). "The underlying concern that gave rise to the contempt power was not, however, merely the disruption of court proceedings. Rather, it was disobedience to the orders of the judiciary, regardless of whether such disobedience interfered with the conduct of trial." Young v. United States ex rel. Vuitton et Fils S.A., 481 U.S. at 798.

Balanced against the judicial power of contempt is the right of an attorney to zealously represent his client. "Full enjoyment of that right, with due allowance for the heat of controversy, will be protected by appellate courts when infringed by trial courts." Sacher v. United States,

343 U.S. 1, 9, 72 S.Ct. 451 (1952). "The arguments of a lawyer in presenting his client's case strenuously and persistently cannot amount to a contempt of court so long as the lawyer does not in some way create an obstruction which blocks the judge in the performance of his judicial duty." In re McConnell, 370 U.S. 230, 236, 82 S.Ct. 1288 (1962).

The petitioner here, faced with the pronouncement of a sentence with which he disagreed, chose to challenge the dignity and authority of the court with angry and disrespectful remarks. See In re Dodson, 214 Conn. at 347-48; Petitioner's Appendix at 5a - 8a. The petitioner twice interrupted the court as it attempted to instruct the clerk to give notice of a right to appeal. Persisting after the second interruption, the petitioner again lambasted

the sentence of the court. Warned that he was out of order, the petitioner paused briefly to acknowledge that fact, only to renew his tirade. As the trial court noted, the petitioner raised his voice and threw his pencil during the outburst. In re Dodson, 214 Conn. at 355-57; Petitioner's Appendix at 24a - 27a.

The Connecticut Supreme Court correctly held that this behavior "went beyond the permissible parameters of advocacy" and rose to the level of contempt of court. In re Dodson, 214 Conn. at 355-57; Petitioner's Appendix at 24a - 30a. As that court found, the petitioner's misconduct "led to obstruction and delay and was directed against the dignity of the court." Id., 360. This holding rested on a proper balancing of the competing interests inherent in the power of contempt and the right of zealous

advocacy. The court below undertook an exhaustive and accurate analysis of the relevant federal precedent. Id., 349-61. This analysis led to the valid conclusion that the boundaries of zealous advocacy established by this Court in such cases as In re McConnell, supra, and In re Little, 404 U.S. 553, 92 S.Ct. 659 (1972), had been exceeded.

Rather than utilizing effective and zealous advocacy in behalf of his client, the petitioner chose to insult the trial judge and challenge the dignity of the proceedings of which that judge is a minister. It is to demean not only the judicial system, but also the profession of lawyering, to include such conduct within the ambit of "advocacy." Far from demonstrating a constitutional "conflict" ready for correction by this Court, the

petitioner establishes only his flawed understanding of the meaning of true advocacy.

**3. The Petitioner's First and Sixth Amendment Claims Were Not Raised Below And, Therefore, Should Not Be Reviewed By This Court**

The petitioner's writ of error in the Connecticut Supreme Court was premised on the due process clause of the fourteenth amendment. In his petition for certiorari the petitioner substantially expands his complaint to encompass the first amendment right of expression and the sixth amendment right to effective assistance of counsel. This alteration of the constitutional predicate for his claim provides yet another reason for denial of his petition.

This Court has held that it would not "decide federal constitutional issues raised here for the first time on review of state

court decisions." Cardinale v. Louisiana, 394 U.S. 437, 438, 89 S.Ct. 1162 (1969). The petitioner failed to raise his first and sixth amendment claims in the Connecticut Supreme Court. Accordingly, this Court should decline to review his claim since it was not "pressed or passed upon below." Illinois v. Gates, 462 U.S. 213, 219, 103 S.Ct. 2317 (1983); see, Michigan v. Long, 463 US. 1032, 1053, 103 S.Ct. 3469 (1983); Fay v. Noia, 373 U.S. 391, 399, 83 S.Ct. 822 (1963).

**B. The Holding Of The Connecticut Supreme Court Is Consistent With The Principles Of Due Process Established By This Court**

In the second part of his petition, the petitioner argues that summary contempt was not appropriate under the facts of this case and that the adjudication of contempt did not satisfy procedural due process. This



alleged basis for certification is merely a rehashing of arguments properly rejected by the Connecticut Supreme Court. The petitioner has not presented any federal question or source of conflict that merits this Court's attention.

This Court has recognized that "the requirements of due process cannot be ascertained through mechanistic application of a formula." Groppi v. Leslie, 404 U.S. 496, 500, 92 S.Ct. 582 (1972). "'Due process' is an elusive concept. Its exact boundaries are undefinable, and its content varies according to specific factual contexts.... The very nature of due process negates any concept of inflexible procedures universally applicable to every imaginable situation." Hannah v. Larche, 363 U.S. 420, 442, 80 S.Ct. 1502 (1960). The touchstones of due process are fundamental fairness and

the protection of the individual against arbitrary government action. Meachum v. Fano, 427 U.S. 215, 96 S.Ct. 2532 (1976).

The petitioner in the present case was cautioned in open court that he was "out of order." The petitioner acknowledged the fact and continued in his contumacious behavior. Following the pronouncement that the petitioner be held in contempt, the trial court directed that he remain in the courtroom and afforded him the opportunity to obtain counsel, who arrived in court shortly thereafter. The trial court "was prepared to continue and finish the summary contempt proceedings at [this] time." Petitioner's Appendix at 81a. At the request of the petitioner, the proceedings were continued until the next court day. When the proceedings were resumed both the petitioner and his counsel were given the

opportunity to speak. After this hearing, the trial court imposed a one hundred dollar fine.

The Connecticut Supreme Court, closely analyzing the relevant federal cases, concluded that this adjudication of summary contempt comported with the requirements of due process as provided by the United States Constitution and prescribed by Connecticut Practice Book §988. Nothing in this conclusion is at odds with federal precedent. The petitioner had reasonable notice of the nature of the accusation against him and clearly understood the trial judge's perception of his conduct. In re Dodson, 214 Conn. at 364; see Groppi v. Leslie, 404 U.S. 496, 502, 92 S.Ct. 582 (1972); Pennsylvania v. Local Union 542, International Union of Operating Engineers, 552 F.2d 498, 512 n.20A (3d Cir.), cert

denied, 434 U.S. 822 (1977). The petitioner was given a hearing and afforded the opportunity to explain his actions. See Taylor v. Hayes, 418 U.S. 491, 498, 94 S.Ct. 2697 (1974). The trial judge was not embroiled in any type of running controversy with the petitioner and was fully capable of maintaining "that calm detachment necessary for fair adjudication" required by due process. Mayberry v. Pennsylvania, 400 U.S. 455, 465, 91 S. Ct. 499 (1971); see Ungar v. Sarafite, 376 U.S. 575, 84 S.Ct. 841 (1964).

The holding of the Connecticut Supreme Court exemplifies a proper adherence to well-settled law. The petitioner has wholly failed to demonstrate a ground for certiorari in this area of fourteenth amendment due process jurisprudence.

**CONCLUSION**

The petitioner presents no issue of importance worthy of review. Therefore, the respondent respectfully urges this Court to deny the petition.

Respectfully submitted.

THE RESPONDENT  
STATE OF CONNECTICUT  
By: Geoffrey Marion  
GEOFFREY MARION  
Assistant State's Attorney  
Appellate Unit  
Office of the Chief  
State's Attorney  
340 Quinnipiac Street  
Wallingford, CT 06492  
(203) 265-2373  
Counsel of Record for the  
Respondent

STEVEN M. SELLERS  
Supervisory Assistant State's  
Attorney

TIMOTHY J. SUGRUE  
Assistant State's Attorney  
Of Counsel

September, 1990